

1
2 DEPARTMENT OF LABOR AND INDUSTRIES
3 STATE OF WASHINGTON
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5
6 ELECTRICAL BOARD MEETING
7
8 TRANSCRIPT OF PROCEEDINGS
9
10 Thursday, April 27, 2006
11

12
13 BE IT REMEMBERED, that a quarterly Electrical Board
meeting was held at 9:00 a.m. on Thursday, July 27, 2006,
14 at the address of 7273 Linderson Way S.W., Tumwater,
Washington before CHAIRPERSON GLORIA ASHFORD and BOARD
15 MEMBERS JIM SIMMONS (Vice Chair), TOM PHILLIPS, PHILIP
PARKER, DON KOPCZYNSKI, FRED TRICARICO, VIRGIL HAMILTON,
16 DAVID A. BOWMAN, DAVID S. BOWMAN, TRACY PREZEAU, GEOFF
NEWMAN, DON GUILLOT, DAVE GOUGH and SECRETARY/CHIEF
17 ELECTRICAL INSPECTOR RONALD FULLER. Also present were
ASSISTANT ATTORNEYS GENERAL DONNA EMMINGHAM representing
18 the Board and SHELLEY MORTINSON representing the
Department.
19

20 WHEREUPON, the following proceedings were held, to
21 wit:

22 Reported by:
H. Milton Vance, CCR, CSR
(License #2219)
23
24 EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
25 (253) 536-5824

2
1 Thursday, July 27, 2006
Tumwater, Washington
2

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1 PROCEEDINGS

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3 CHAIRPERSON ASHFORD: The hour's now 9:05, July 27,
4 2006. The State Electrical Board will commence.

5

6 Item 1. Approve Transcript of April 27, 2006,
7 Electrical Board Meeting

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9 CHAIRPERSON ASHFORD: The first order of business is
10 to approve the transcript meeting minutes of April 27,
11 2006.

12

13 Motion

14

15 BOARD MEMBER PREZEAU: So moved.

16 BOARD MEMBER (D.A.) BOWMAN: Second.

17 CHAIRPERSON ASHFORD: We have a motion and a second
18 to approve the meeting minutes. Any discussion? All
19 those in favor?

20 THE BOARD: Aye.

21 CHAIRPERSON ASHFORD: Opposed?

22

23 Motion Carried

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25 ///

1 CHAIRPERSON ASHFORD: Mr. Woods? Is Patrick Woods
2 here?

3 SECRETARY FULLER: Madam Chair, would you like to do
4 an introduction?

5 CHAIRPERSON ASHFORD: Oh, I almost forgot.

6 Excuse me for a moment.

7 MR. WOODS: That's fine.

8 CHAIRPERSON ASHFORD: We have a new Board member
9 today. Mr. Virgil Hamilton. Would everybody please like
10 to introduce themselves.

11 (Whereupon, all Board members introduced
12 themselves.)

13

14 Item 3. Departmental Update

15

16 CHAIRPERSON ASHFORD: Patrick?

17 MR. WOODS: Madam Chair, members of the Electrical
18 Board, it's a pleasure to be here again.

19 Just a couple of items. I know you've got a busy
20 agenda. I want to let you know some of the things that we
21 are working on as an agency.

22 As you may be aware of, the HVAC working group has
23 been active this year. They've met several times across
24 the state. There's been subcommittees. And we are
25 getting ready to wrap that up with the final meeting on

6

1 August 25th, which we believe will be in our L & I
2 facility in Tacoma. The Tukwila facility was booked, so
3 we weren't able to get that this time around. You're
4 welcome to attend.

5 It's been a very challenging environment, as you can
6 imagine, working with all the different issues. But I've
7 got to congratulate all the participants. It was tough.
8 The first few meetings were a little frosty. It was
9 difficult to get folks together. But afterwards people
10 began to work very collaboratively together, understood
11 their positions.

12 We have at this stage about five different proposals.
13 And that's what the JLARC committee, the Joint
14 Legislative Audit and Review Committee, asked us to do to
15 present scenarios to them.

16 Now, as this process continues, we are anticipating
17 there will be conversations between the various parties.
18 But coming up to the presentation on the 25th, those five
19 proposals will be flushed out. And what that will entail
20 is one, a summary of the proposal and whether it deals
21 with licensing, whether it deals with certification,
22 administrator or permitting, whatever aspect that the
23 different proposers are envisioning. With that there will
24 be five criteria that they'll be asked to respond on.
25 One is public safety. The other is consumer protection.

7

1 That there will be no stranded capital. There will be no
2 unnecessary obstacles to the industry. So there's a whole
3 array of things that they're looking at. They're also
4 looking at the fiscal aspect for each proposal for the
5 industry. And the Department is now in the throws of
6 doing a fiscal impact to the agency once those proposals
7 are in place.

8 So I would welcome you to come and participate if you
9 can on the 25th. I'm sure there will be presentations.
10 And Ron will be discussing that at a later date for both
11 the Electrical Board and the Plumbers Board just to review
12 and look at those proposals and hear from the individuals
13 of the groups that are proposing them.

14 In addition, I want to let you know that the good
15 news on our permitting, the growth in the Internet and
16 e-commerce, I just wanted to mention this has been a great
17 success. I chatted with Phyllis on the way in. And I
18 believe we're up to close to the high 60 percent of our

19 permits that are being done on-line. And as I look to our
20 telecom and members of the Electrical Board, that was one
21 of the initial things that they put to us back in the year
22 2000: "If we're going to get involved in the electrical
23 activities, please put things on-line." So I'm delighted
24 to say that has been working out for all of the various
25 parties involved.

8

1 In addition, we are looking at a off-site for our
2 division on October 3, 4 and 5. I just welcome if there
3 are any of Board members that would like to volunteer to
4 spend some time with us to give us feedback in what we do
5 well, what we do poorly, and where you'd like to see us in
6 the future, if you can participate, just to get that input
7 from you would be tremendous.

8 It's something that some of the Board members have
9 participated in. I know Jim came to one.

10 We've tried to respond to those issues. In fact, Ron
11 was instrumental in pulling together an all-inspectors
12 meeting here in our facility for about 300 of our
13 inspectors across all the programs, both the electrical,
14 the plumbing, the contractors, the boiler, the elevator,
15 and reemphasizing customer service and what it's all about
16 and what our customers need when they see us arrive
17 on-site or whether they schedule an inspection.

18 Those are the main issues, Madam Chair. But I also
19 wanted to make sure that I'm here to answer any questions,
20 concerns or issues that you feel the Department needs to
21 take on.

22 BOARD MEMBER SIMMONS: Patrick, one thing that I
23 think the Department needs to do -- and I am not sure
24 about exactly the process involved. But something I would
25 like to see done is an outreach to the public on

9

1 permitting issues and licensing issues, educating the
2 public on it.

3 I cannot tell you how many times I go out to a small
4 job -- and I see literally hundreds a year -- but how many
5 times I talk to somebody about doing a small job and I
6 include in my estimate a permit, and they say, "You got to
7 get a permit for this?" Because nobody else told them
8 that.

9 "Oh, yeah. We're running a new circuit. We're
10 running wire. We got to get a permit."

11 "Oh, is that really necessary?"

12 I say, "Yes. It's state law."

13 "Well, I've never heard that before."

14 I'm being very serious here. It's something that I
15 think that the public really needs to be educated on. And

16 in my opinion, part of the electrical fund would be very
17 well utilized for an outreach -- I don't care if it's
18 newspapers or something -- to educate the people on what
19 is required in the state of Washington as far as
20 permitting.

21 Homeowners out there think that if they do their own
22 work, they don't have to get a permit. They go down to
23 Home Depot or Lowe's and buy the material. They walk out
24 of there. Nobody tells them "boo" about anything. And
25 they go home with a wire. They go home with a panel.

10

1 Nobody says anything to them. They install it. They
2 don't give it a second thought until they go to sell the
3 house, and a home inspector happens to notice -- because
4 some of them are sharp; a lot of them are not -- but
5 somebody happens to notice it and calls it out, and it
6 then becomes an issue. That's the only time it becomes an
7 issue. And I think it's a very serious problem in the
8 state of Washington.

9 MR. WOODS: And Jim, I share that with you. And, in
10 fact -- it almost seems like we've choreographed this.
11 But --

12 BOARD MEMBER SIMMONS: We didn't even talk.

13 MR. WOODS: I was trying to cut down and be short --
14 and you know how difficult that is for me --- at the idea
15 of -- we've got two things we're doing at the moment.

16 I went by our outreach office, and we've got -- one
17 is the contractor training. It's really not just
18 electrical. It's all the requirements. And they've been
19 very successful.

20 In Seattle -- I don't know if you're aware of this,
21 but we started them in the year 2004. We've done them
22 through the years. And usually when you do these types of
23 trainings with a contractor, they go down, you know, the
24 participation. You get people's interest the first time
25 around. The second time around, they go, "Well, maybe

11

1 we'll send somebody there." And then by the third time
2 they're really struggling to get anybody to show up.

3 But we started in October 22, and we had 93
4 attendees. January 2005, 150 attendees. October 21st,
5 162. And this is February 2006: 184. And that's just
6 some of them.

7 In Tumwater we went from 80 in 2004 to 200 in 2006.
8 And that's training contractors on all the requirements,
9 the bonding and the responsibility for workers' comp and
10 the safety issues. So the contractors I think we're
11 beginning to do a good job. We can do more. But we're
12 getting interest -- and the reason why we're getting

13 interest, we're combining with associations. Because
14 they'll come and listen to L & I for so long. But if
15 there's an association that's a part of it, they feel that
16 they can get additional benefit, and so they're sending
17 people to it.
18 The area of the homeowner, which is a big concern --
19 and I think Ron knows how much I bring this up. This is
20 my one concern. When I'm looking at safety issues, we've
21 got a system that if you are a certified electrician, we
22 pretty much got some sense that you really know what
23 you're doing. And then you've got a permitting process.
24 And even with that, even in the 180,000 inspections we do
25 a year --

12

1 SECRETARY FULLER: Permits.
2 MR. WOODS: Permits. We do 300,000 inspections.
3 Thanks, Ron.
4 And with that, we find approximately -- is it, Ron?
5 -- 40,000 serious corrections. Am I right?
6 SECRETARY FULLER: (Nodding affirmatively.)
7 MR. WOODS: Yeah, 40,000.
8 Now, we know that a lot of those are homeowners and
9 people who are not trained. But some of them are people
10 who are certified electricians that are doing this. If
11 it's that bad with people who get the permit, and if it's
12 that bad with people who are trained -- and, you know,
13 electrical is a tough job to do. When I talk to our
14 technical specialists, I get mesmerized by the amount of
15 technical knowledge they have to know to deal with
16 commercial systems and even the residential systems. But
17 if it's that bad for people who are trying to comply, what
18 is it like for the people who end up in Lowe's or Home
19 Depot and they've got a bundle of stuff and they say,
20 "Well, I hear you can save some money if I can do this
21 myself."
22 So I agree with you, Jim.
23 Now, we do have home shows that we have made contacts
24 with. And I'll leave these for you. I'll pass them
25 around. But we've been going to all the home shows, the

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1 fairs, emphasizing public safety. And usually it's
2 consumer protection types of -- your bond, make sure you
3 get a registered contractor, use the folks who are
4 licensed.
5 But we could put in more resources. And Ron and I
6 have talked about that. And that may be something that
7 will be a good use of your resource.
8 The challenge is this: If we actively pursue this
9 and get people to get permits, it's going to be a

10 tremendous challenge to make sure we're able to meet that.
11 So we got to be ready for that.

12 One of the things I'd like to be able to do is to
13 promote people towards getting a licensed contractor with
14 certified workers because you need that knowledge to be
15 able to do the job. So I think there are ways that we
16 could pursue it to get people to use those experts that
17 are there for them.

18 But in any way that we can support you in that as a
19 Board, we want to do that.

20 BOARD MEMBER SIMMONS: One other possibility,
21 Patrick, is having L & I work with and in conjunction with
22 the insurance industry. Because the insurance industry,
23 if they are really on top of their game, they're not going
24 to be paying claims, in my opinion, for electrical work
25 that was not inspected. And if that word starts getting

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1 out on the street, people start really pushing that, the
2 insurance industry starts asking people, "Okay, you built
3 an addition on this house. Did you get permits for
4 everything that was done?" "You just added a swimming
5 pool. Was it done by a licensed contractor? Was the
6 permits bought and inspected?" Because if the insurance
7 industry offers no protection to these people that are
8 doing illegal and unsafe work, people are going to start
9 making attention in my opinion. It might be a route to
10 go.

11 MR. WOODS: You're absolutely right. One of the big
12 things -- when I was back in '83/84 when I got involved in
13 dealing with electrical issues with the legislature, it
14 was hot tubs was the issue that got people's attention. A
15 lot of people were putting in hot tubs in those days, and
16 they weren't doing it correctly and were ending up with
17 either getting electrocuted in the hot tub or the system
18 having problems.

19 So I think that's a tremendous way for us to begin to
20 leverage and to work with them. The one thing that we
21 will need to do -- and that's important with our funds --
22 is to make sure we have the funds to meet the requirement
23 of the inspections. And that's just the next area that we
24 need to be sensitive to.

25 So as you're looking at your fund -- and I know that

15

1 it's at a level that is higher than the traditional level
2 of the fund, we need to keep that in mind if we're going
3 to take on new initiatives. But I also believe that
4 that's something we should be doing to make sure that
5 public safety is taken care of.

6 Any other questions, Madam Chair?

7 CHAIRPERSON ASHFORD: Fred.
8 BOARD MEMBER TRICARICO: Morning, Patrick.
9 MR. WOODS: Good to see you.
10 BOARD MEMBER TRICARICO: Yes, good to see you.
11 Patrick, listening to when you opened up about the
12 HVAC committee, harkening back to the days of -- recently
13 I've just had an incident I ran into that I realized that
14 we need to pay some more attention to some issues.
15 I had asked to have a handout done from the City of
16 Seattle, the requirements for low-voltage wiring. What I
17 found out is their requirements for permit for low-voltage
18 wiring is not even close to the levels we had set with
19 5802.
20 If I could ask you to go to that second page where it
21 says "Requirements For Low Voltage Wiring Systems,
22 Commercial & Industrial -- that's actually the last page,
23 Patrick -- if you look at the item under "Customer-Owned
24 Telephone, data, modem, and other communication systems"
25 at the top "Is a Permit Required?" "No." And then down

16

1 lower you'll see that their requirements for a permit
2 exclude breaching of a fire barrier, hazardous -- running
3 wire through hazardous locations, running wire through
4 breaching a fire barrier. And I'm sure more than anybody
5 you're aware that those were among the very primary safety
6 issues that led us to 5802.
7 In talking with the City of Seattle, they feel that
8 their standards meet ours because of their interpretation
9 of the code. I've also been told -- and I don't know the
10 veracity of this -- that the City of Seattle is a charter
11 city. And having -- I have not investigated this, but
12 this is some of the things I'm told -- and that the fact
13 that they had their own telecommunications permitting
14 process before the state issued the law that they can set
15 their own standards. But I remember from the law that we
16 wrote, it said their standards have to meet or exceed the
17 ones set by the state. So I've been rallying to get more
18 compliance in telecommunications, especially to the
19 providers. And I'm sure you'll also remember that the
20 issues around the providers doing the work, some of the
21 issues that really brought us to EHB 3003, there was
22 allegations that the providers were not doing work
23 according to the National Electrical Code, they were
24 breaching fire barriers, they were laying cables on top of
25 T-bar ceilings without getting -- without securing them.

17

1 So I kind of feel like I've been tilting against --
2 because the majority of the work I see get done gets done
3 in the City of Seattle, and I've been seeing -- and

4 there's no permits being issued for it, though. And
5 there's no permit because the city doesn't require it.
6 How do we work that issue to where their -- in my opinion,
7 their standards don't even come close to the safety
8 standards we set in the law. What is -- is there a
9 process that we can use?
10 Because when you think about it -- you know, we have
11 an appeal here today where an administrator says he has
12 115 technicians that he's trying to keep track of and keep
13 -- and provide service according to the law. Well, if you
14 look at an electrical contractor -- and some
15 telecommunications contractors have the option or the
16 luxury of working with any jurisdiction they choose to
17 work in. But if you look at the telecommunications
18 providers, they're regulated by law to provide service to
19 everybody. So does a telecommunications provider have to
20 teach 25 or 26 different sets of standards because the
21 cities may have different standards than the state? I
22 mean, that's a pretty difficult task. So I don't know if
23 we've actually created a level playing field. I don't
24 know if we can provide it for protection, for fire safety.
25 So what can we do to work through this issue?

18

1 MR. WOODS: Fred, the best means that we have to try
2 and work through those issues is first of all to get with
3 the city and just see what their requirements are, see if
4 there is a common understanding of what the state
5 requirements are and the code. And generally Ron as the
6 electrical chief takes on that responsibility. And then
7 from there, if we can't resolve it, we work through a
8 process, see if we can arbitrate something through.

9 So I will ask Ron to take the lead on this, and that
10 I'll be happy to participate. And then if there are
11 members of the Electrical Board that would like to help us
12 in clarifying that with the City of Seattle, that would
13 also be an asset.

14 BOARD MEMBER TRICARICO: And Patrick, you know, I've
15 only run into this from the City of Seattle. I don't --
16 and I'm not trying to single them out because I don't know
17 what the other 25 or 26 jurisdictions have as far as
18 requirements; I don't work in those areas. So I think we
19 also need to do some investigation and find out what are
20 -- maybe a matrix of what the standards are city to city
21 so we have some idea as to whether they're close to ours,
22 equal to ours or better than ours.

23 MR. WOODS: Let us pursue that with Ron and his team
24 and see if we can come up with an understanding. And if
25 there's a difficulty, we need to work with the parties to

19

1 come to closure.
2 BOARD MEMBER TRICARICO: Thank you.
3 MR. WOODS: So at the next Electrical Board meeting
4 perhaps we can report back on that.
5 BOARD MEMBER TRICARICO: Thank you.
6 CHAIRPERSON ASHFORD: Anybody else?
7 BOARD MEMBER GOUGH: Patrick, I'd like to tag onto
8 what Fred was talking about related to HVAC. I commend
9 the task force for the work that they've done to date on
10 looking at the HVAC industry and the regulations that
11 should or should not apply to it.
12 One thing that I would like some attention given to
13 is now that class B permits are being required on some of
14 the basic repairs to inside a -- HVAC equipment inside the
15 box, I don't know if the Department has spent any time
16 with the inspectors actually training them on how to apply
17 the WAC rules in the code to inside, you know, ETL and UL
18 listed equipment so that the contractors have a clear
19 understanding of when the inspectors are coming out to
20 make those inspections how those rules are going to be
21 interpreted. It's going to become more and more prevalent
22 as more inspections are done within that type of
23 equipment, and I think many of the contractors are still
24 not clear on how those rules are going to be interpreted
25 and applied to that listed equipment.

20

1 MR. WOODS: And just to let you know, Ron and his
2 team will be looking at training to make sure that it is
3 consistent across the state. And we can also report back
4 to you on that on how that's proceeding.
5 And remember, the class B permits was a very
6 innovative way to deal with a couple of things. One is
7 what level of inspection is required to make sure there's
8 public safety. And then for the workload that our
9 inspectors are dealing with. They're dealing with 10 to
10 11, 12 inspections a day, the commitment that we're trying
11 to make 89 percent within 24 hours, all those things that
12 the industry is wanting to see it happen. So we'll go
13 back and revisit that. Because when you put something new
14 in place, there is a learning curve, both for our
15 inspectors and for the industry.
16 But thank you for bringing that to our attention,
17 Dave, and for your participation in the first few meetings
18 of the working group. It was very helpful.
19 CHAIRPERSON ASHFORD: Mr. Fuller, you had some
20 comments?
21 SECRETARY FULLER: I'd just like to introduce some
22 new staff members to the Board because I think you've got
23 a high interest in them. The first one would be --
24 they're behind me -- Doug Griffith is the first one. Some

25 of you know Doug from some of the stakeholder meetings and

21

1 TAC's and things like that. But Doug is a new technical
2 specialist. He started on Monday. So he's filling a
3 vacancy that we've had for a little while. And the other
4 three fellows back there with him are Ken Copeland and
5 Bill Jordan and Charlie Brinkmeier (phonetic). And
6 they're the electrical CORE team. So they're the fraud
7 guys that we have out operating across the state. Bill's
8 over in Spokane. Ken's in Tukwila. And Charlie is in
9 Vancouver. So they kind of quadrant up the state. But
10 they're all going to go out and catch some of Jim's folks
11 today probably. He's not there to watch them today.

12 The CORE team, just to let you all know, has been
13 doing a tremendously good job. We've gotten really really
14 positive feedback. I only actually know of two complaints
15 against them since they started in January. And they've
16 issued over 1,000 citations. They've issued almost
17 one-third of all the citations we've written in the whole
18 program since they started. They've done -- I think the
19 number now is up to 46 referrals to industrial insurance
20 and people like that too. So they're doing just a bang-up
21 job out there. I think they've caught right at 120
22 unlicensed contractors so far out of that thousand. And
23 there's another big percentage of uncertified electricians
24 in that. So of the targeted issues, they're running well
25 over 50 percent of their citations to the targeted people.

22

1 So that's huge for us in combating the underground
2 economy. So they have more than paid their bill so far.
3 I highly appreciate what they're doing.
4 MR. WOODS: On that comment regarding the underground
5 economy, that was one of our off-sites -- I would
6 encourage you to think about our off-site because that was
7 -- in our first off-site, that was the big issue that was
8 brought up: "Why are you targeting licensed contractors
9 and certified workers for all these inspections when we
10 have a whole industry that's operating underground and you
11 never pay any attention to it?" So we did respond to
12 that. And this is part of the result. Our inspectors
13 first of all initially took on that task more
14 aggressively. But the way this worked in the pilot
15 project -- and it was Ron's idea initially too -- about
16 two years ago, two and a half years ago said, "We have an
17 ability to try a pilot project." And so it worked well,
18 and then from that pilot, we got the permanent staffing to
19 do it. So I would encourage you to think about the
20 off-site if there's an ability to give us some information
21 because it does make a difference, and your involvement

22 changes how we operate.

23 CHAIRPERSON ASHFORD: Thank you, Patrick.

24 Tom.

25 BOARD MEMBER PHILLIPS: I have some prepared comments

23

1 that I brought with me that really addressed some of the
2 things that Fred brought up. And I was planning on kind
3 of maybe tagging them onto Ron's WAC update, but maybe in
4 view of Fred's comments, it should be presented now. But
5 I guess I would leave that decision up to you if you think
6 it should be now or later in the agenda.

7 CHAIRPERSON ASHFORD: This is as good a time as any.

8 BOARD MEMBER PHILLIPS: Okay.

9 (Reading) "The whole issue of the cities operating
10 separately and parallel to the state is one of my big
11 concerns and the differences between city to city and the
12 hardship that it causes on the electrical industry.

13 "RCW 19.28 gives cities the authority to enact and
14 enforce rules and regulations requiring an equal, higher
15 or better standard of construction and an equal, higher or
16 better standard of material, devices, and appliances and
17 equipment than is required by L & I. And many cities are
18 exercising this right, and now approximately half of all
19 electrical permits and inspections are through a city, not
20 the state.

21 "The Department of L & I creates electrical rules and
22 amends the NEC with little or no input from the cities.

23 This has resulted in a state electrical code that contains
24 many administrative rules that do not apply to cities. It
25 has also resulted in a format that comingles the

24

1 administrative rules with the actual code amendments.

2 "In order for a city to have a legitimate adopting
3 ordinance to adopt this state code, it must sort out the
4 provisions of the WAC rules that it cannot or chooses not
5 to enforce. And there's many of these. Most of them
6 involve variances; inspections; permit fees; plan review
7 requirements; a lot of definitions that pertain to state
8 traffic management, class B electrical inspections,
9 permitting requirements, electrical engineer
10 certification.

11 "So although every city has the authority to adopt
12 separate electrical rules, in my opinion these rules
13 should be limited to specific instances due to unique
14 characteristics of the city.

15 "And fortunately I'm not alone in this opinion. Some
16 of the cities that enforce the electrical code have been
17 meeting as a subcommittee of the Washington Association of
18 Building Officials, WABO. This subcommittee has drafted

19 an electrical code that is equal or higher than the state
20 code. The intent is to create a common code that would
21 promote consistency among the cities that enforce the
22 electrical code. WABO asks that I share the proposed code
23 with L & I so they be aware of the cities' issues and
24 concerns. It was also hoped that L & I will work with the
25 cities in our goal for more consistent electrical code

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1 enforcement throughout the state.
2 "In May I submitted the code change proposal on
3 behalf of WABO that would convert the state amendments to
4 the NEC code formatting and separate the NEC code
5 amendments from the administrative rules. It's my
6 understanding that the Technical Advisory Committee did
7 not -- was not allowed to discuss or consider that
8 proposal. This is very disappointing as WABO is
9 interested in improving the enforcement of the electrical
10 code in the state of Washington by promoting consistency
11 between cities and the state. The best way to accomplish
12 this goal is to jointly agree upon the format of the code
13 and work towards common amendments.
14 "WABO would very much like to receive feedback from
15 the state on WABO's proposal and to open a channel of
16 dialogue that could lead to future cooperative efforts
17 between the cities and the state.
18 "The state of electrical code enforcement in the
19 state of Washington has evolved into a patchwork of cities
20 separated by state jurisdiction, each enforcing their own
21 version of the code. This has created a very difficult
22 environment and an unfair burden on the contractors for a
23 challenge to have to work by a different set of rules for
24 each jurisdiction that they work in.
25 "It's easy to say it's the cities' fault and let them

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1 fix the problem, but it's a statewide problem that's
2 created by an atmosphere of turf battles and a lack of
3 foresight and a state rule-making -- and a rule-making
4 process that excludes cities.
5 "But things can be better. Instead of going on with
6 business as usual, we can come together to correct the
7 problems. We can create a forum that brings like-minded
8 people together to cooperatively improve the electrical
9 enforcement statewide.
10 "Clearly the cities bear much of the responsibility
11 for where we are today. Cities need to communicate better
12 with other cities and evaluate their locally adopted codes
13 for consistency and avoid adopting codes that are based on
14 personal preferences. All codes amendments must be
15 technically justified.

16 "L & I needs to consider how their rules may affect
17 cities. This can best be done by creating a rule-making
18 process that is open to the cities.
19 "There are several steps that L & I can do now that
20 would promote consistency.
21 "One, is to rearrange the WAC rules by separating the
22 code amendments from the administrative provisions. This
23 would make it much easier for a city to adopt L & I's
24 amendments to the NEC. Currently it's difficult for a
25 city to adopt the State rules without editing much of the

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1 administrative provisions that do not pertain to the
2 cities. Plus, it's very difficult to understand what is
3 an administrative provision and what is a NEC amendment.
4 "Second, is to rewrite the state amendments using the
5 NEC format. Converting the state electrical code to the
6 NEC format would provide clarity to the intent of the
7 amendment. The reader can tell exactly what provision or
8 section of the NEC is being amended. It would also
9 provide the ability to create code inserts that can be
10 inserted into loose-leaf editions of the NEC, similar to
11 what's used now by the State Building Code Council. This
12 will make it much easier to use the code and make the
13 users of the code more aware of the state amendments.
14 "Third, create a rule-making process that allows
15 cities to have a voice in the adoption of the new rules.
16 "We must all serve the interests of Washington
17 citizens and businesses regardless if they are regulated
18 by the State's electrical program or a city program. The
19 State and cities should work more closely together as
20 partners to improve the enforcement of the electrical code
21 in the state of Washington."

22 Thank you.

23 CHAIRPERSON ASHFORD: Fred, do you want to comment?

24 BOARD MEMBER TRICARICO: No. That makes perfect
25 sense to me.

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1 I mean, I can't speak directly to your issue about
2 the administrative code being separated from the NEC
3 because obviously I've never dealt with that issue before.
4 But I honestly do see a real need to unify the code
5 through the state so that contractors know regardless of
6 where they're working that they have one consistent set of
7 rules to work on, and that those rules are based on
8 technical and safety necessity.

9 So I support most of that, Tom. Thank you.

10 CHAIRPERSON ASHFORD: Ron, do you have any comments
11 on this issue?

12 SECRETARY FULLER: Well, I think my comments are --

13 and I was going to talk about it at the WAC portion too,
14 but we'll go ahead and do it now, is that we didn't want
15 to move forward that particular proposal for several
16 reasons.

17 One, is the short time line that we've got to deal
18 with the WAC rule this year. This year because of the
19 statutory change the last session -- changes -- we have to
20 be done with our WAC rule December 31st at the latest.

21 The proposal that was presented did separate out the
22 -- I'll say did a good job at trying to separate out the
23 technical from the administrative sections. But the
24 format that it was in is not one that we can use.

25 The next biggest problem -- and probably the biggest

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1 problem that we had actually with the proposals -- is that
2 the language wasn't just cut and pasted into a new
3 section; it was changed. A lot of it was changed. And
4 before we are going to go down the path of any kind of
5 technical changes without requiring installations to be
6 made, it's going to require a significant stakeholdering
7 process. Little things like: Do you -- like our
8 discussion last time about the countertop outlets. We're
9 not going to just arbitrarily change that stuff because
10 somebody makes a proposal on it. There has to be a lot of
11 discussion with a lot of people to do those kind of
12 changes. And that's what we were presented with.

13 After the TAC committee meeting we did go through the
14 WAC. And if you look at the latest versions out there, we
15 have I believe separated the technical from the
16 administrative in that sections 100 through 800 are
17 clearly NEC now. That's all they relate to. And they
18 exactly match the code. And the subheaders in those even
19 match the subsections in the NEC. So if you go into, say,
20 250, that is grounding and bonding in the WAC rule and the
21 NEC. And the subtitles under that exactly match between
22 the WAC and the RCW. So if we're modifying 250 052, there
23 will be a subheader there that says 052 and whatever that
24 paragraph is. So it's pretty clear even right now. The
25 key is is that we didn't change any language.

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1 And that format has been there for a long time. It's
2 just that we had -- we did have -- and I agree with Tom --
3 we had some of the things mixed into it like the class B,
4 the industrial equipment and a few things like that. But
5 in the version that you're going to hopefully give your
6 blessing to today, that stuff has been moved out. So
7 class B's are in 900 now under permits.

8 So there's a very clear distinction now. A city
9 could very easily say, "We adopt 100 to 800." And that is

10 all the technical issues. Everything else is
11 administrative.

12 So that's where we are right now. And that's what we
13 want to move forward with in this WAC rule. We're not
14 intending on changing technical issues at this point.

15 What I want to do with WABO, though, and the cities
16 and everybody else is that because we're on an abbreviated
17 time line this time, that's going to give us more time
18 next year. And so what I intend to do is shortly after
19 the first of the year, start bringing all the stakeholders
20 together, contractors and WABO, and we'll all sit down at
21 the table and work on technical rules. Because we've got
22 a code change coming up. We've got lots of things getting
23 ready to happen this next year. And it might take us two
24 years to get through the next one; I don't know. I mean,
25 the code change by itself is usually a real ordeal because

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1 they always do something that's really wrong that we have
2 to talk about for a long time.

3 So my intent is is to start gathering groups together
4 probably toward the end of session actually. Because it's
5 a major session this time. So the cities and us and
6 everybody else are going to be involved in that. But when
7 session starts winding down, then I would like to be
8 sitting down and talking about this. There are some
9 formatting issues and how we split and divide and do
10 things that may not be exactly what WABO wants, but it may
11 be the best we can do.

12 So we're willing to work with them, but during the
13 next WAC rule cycle, not this one.

14 BOARD MEMBER PHILLIPS: Yeah, I appreciate your
15 comments, Ron. And I think we understand -- WABO
16 understands that that was an awful lot and a big change,
17 and it would be a great hardship for this state to make
18 that conversion at this cycle. But we appreciate working
19 together in the future and towards a format that is more
20 palatable to the cities.

21 CHAIRPERSON ASHFORD: Thank you, both.

22 Any more comments on that?

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1 Item 4. Appeals

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3 CHAIRPERSON ASHFORD: Let's move on to appeals.

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5 Item 4.A. ADT Security & Jon Jolibois

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7 CHAIRPERSON ASHFORD: The first appeal up is ADT
8 Security and Jon Jolibois. Please introduce yourself to
9 the Board.
10 MR. LARSON: Yes. Madam Chairwoman, members of the
11 Board. My name is Bruce Larson. I'm the attorney for
12 ADT.
13 ASSISTANT ATTORNEY GENERAL MORTINSON: Good morning,
14 Madam Chair, members of the Board. I am Shelley
15 Mortinson. I'm an assistant attorney general representing
16 the Department in this appeal.
17 CHAIRPERSON ASHFORD: Procedure -- State?
18 ASSISTANT ATTORNEY GENERAL MORTINSON: Probably in
19 this case, Madam Chair, because it is the Department's
20 appeal from the Administrative Law Judge's decision.
21 MR. LARSON: May I ask before we get started, Madam
22 Chairman -- Chairwoman, whether everyone received my
23 written presentation that I brought this morning?
24 CHAIRPERSON ASHFORD: I believe so.
25 MR. LARSON: Thank you.

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1 CHAIRPERSON ASHFORD: Shelley.
2 ASSISTANT ATTORNEY GENERAL MORTINSON: Thank you.
3 This case involves two citations issued, one to ADT
4 Security Services, one to Jon Jolibois. It concerned an
5 installation of a security system and an upgrade of
6 another system at 130 Den Road in Trout Lake, Washington.
7 The property owner was Gene Scheel.
8 Before I present the case, though, I would like to
9 add a note about the burden of proof. In the submission
10 Mr. Larson brought today on behalf of ADT and Jon Jolibois
11 there is a section about the state did not sustain its
12 burden of proof.
13 I'd like to point out that in all appeals the burden
14 of proof is on the appellant. That's by WAC 296-46B-995,
15 sub 18. So this Board this morning is charged with
16 deciding after hearing -- reviewing the records, hearing
17 the argument of the parties whether the Administrative Law
18 Judge was correct in finding that ADT sustained its burden
19 by a preponderance of the evidence or proving the
20 citations did not occur or whether the judge was wrong in
21 finding that ADT sustained a burden of proof. That is the
22 issue before the Board. And I wanted to bring that out
23 before I started.
24 I suspect you've all had an opportunity to review
25 your packets. I won't go into a lot of detail about the

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1 facts.
2 Briefly, they are these: The citations were issued
3 on the statement of a gentleman named Louis McAtee. He is

4 a contractor who has worked for the property owner. He's
5 also a friend of the property owner. He submitted a
6 statement saying that he saw Mr. Shaw -- Keith Shaw, an
7 electrician that works for ADT at the time these occurred
8 -- installing high voltage wire in a security system.
9 There was more than one building on the property. There
10 was the home and then there was one that's been referred
11 to as both the game room and a trophy room. This is the
12 same room. Mr. McAtee testified that he bought high
13 voltage wire for Mr. Shaw to install when the wireless
14 system he installed first did not work. He also testified
15 that the wireless system was by the door of the trophy
16 room. The wired system was across the room next to a
17 tip-off area or storage room of the game room. And I'll
18 refer to it as the game room for simplicity. He also
19 testified there was no other electrical work going on in
20 the game room at the time the security system was
21 installed. The inspector Gary Upton testified that there
22 also to his knowledge the wiring of the game room had been
23 taken place and been approved in 1998. So there was no
24 other electrical work going on but the installation of the
25 security system in May of 2003.

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1 There was a lot of testimony about dates. I think
2 this is what we know. ADT was out there on two days in
3 May 2003. They have submitted an exhibit of signals
4 tested from the residence and the game room on May 10th
5 and May 12th of 2003. There was also a lot of testimony
6 about exactly when this wire was purchased. There was an
7 undated -- unfortunately -- undated receipt with the --
8 with what was referred to as 12/2 wire purchased by
9 Mr. McAtee with his signature next to the wire on the
10 receipt from the hardware store.

11 Mr. Logan from the hardware store testified about a
12 range of dates that the wire could be bought. He also
13 testified that before a next receipt is written, a
14 previous receipt is rung up. However, in the testimony
15 there was at least one instance where that was not the
16 case. A receipt of May 12th rung up May 14, but the next
17 receipt was May 13th, and he couldn't explain that. So I
18 think the bottom line is we simply do not know when that
19 wire was purchased.

20 We have two people, Wendi Hunt, the fiancée of Gene
21 Scheel and resident of the property, we have both she and
22 Mr. McAtee testifying that a wired system was installed.
23 They both testified that the wireless one did not work.
24 For some reason the signals didn't go to the house. So it
25 required a hard-wired system.

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1 Mr. Shaw testified that he did put in a hard-wired
2 system, but to my understanding -- and please technically
3 this may not quite be right, but I'll see if I can get the
4 essence -- I believe he testified it was low-voltage work
5 because he connected a wire from the panel to a
6 transformer, then to a power outlet. However, Ms. Hunt
7 testified there was no power outlet near where the panel
8 was installed in the game room.

9 So we have conflicting stories. We have uncertainty
10 about when the wire was purchased.

11 The last thing I'd like to talk about, though, is
12 motive. Who has the motive to not tell the truth?
13 Mr. McAtee, he has nothing to gain by testifying or
14 filling out the complaint or saying that he saw it
15 installed. He will gain nothing. Wendi Hunt testified
16 that they will gain nothing. Oh, I'm sorry, I forgot
17 something important. The game room burned down in the
18 summer of 2004. So unfortunately there was no way to look
19 at any physical evidence at the time that the citations
20 were issued.

21 Wendi Hunt testified that they had been reimbursed by
22 the insurance company. They had no intention of filing
23 any suit against ADT for any alleged part the wiring might
24 have had in the fire. There's testimony that they don't
25 know what caused the fire. She has no motive, nothing to

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1 gain by testifying.

2 The only person who might have something to gain by
3 testifying is Keith Shaw. And his motive would be not to
4 get into trouble for installing high voltage wiring which
5 was beyond at that time the scope of ADT's specialty
6 contractor license.

7 Finally, there is one other issue that came up, and
8 that is the duties of the administrator. And the question
9 has arisen before this Board before, and it remains. Is
10 the administrator strictly liable for any citations issued
11 to the company? Is he also liable for failing in his
12 duties? It is a harsh standard. I don't think there's
13 any question about that. But he is. The law says the
14 administrator shall ensure.

15 This very issue came up before this Board before in
16 another citation issued to Mr. Jolibois. This Board at
17 that time found that he was strictly liable. That case
18 went on to Pierce County Superior Court. And on February
19 13, 2004, Judge Vicki Hogan agreed that the
20 administrator's duty is strictly liable to ensure that
21 laws are followed, safety procedures are used, proper
22 licenses are used.

23 So it's the Department's position that Mr. Jolibois
24 was liable for ensuring that the work was properly done at

25 the Scheel residence. So the Department requests that

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1 this Board reverse the decision of the Administrative Law
2 Judge and affirm citations -- let me get them -- 44651 to
3 ADT with a penalty of \$500 and E44652 to Mr. Jolibois with
4 a penalty of \$3,000.

5 That's all I have, Madam Chair.

6 CHAIRPERSON ASHFORD: Thank you, Shelley.

7 MR. LARSON: Madam Chair, members of the Board, I
8 hope you will forgive me if I ramble on too long. I'll
9 try not to do that. But this is a matter of significance.

10 It's a matter that is quite serious. And it has
11 ramifications beyond simply the citations which are at
12 issue. And, of course, those are serious as well. You
13 don't want to be liable for things that you didn't do. So
14 the company is taking this very seriously.

15 But I was struck by the irony of the conversation,
16 the presentation that went on to the Board just before our
17 appeal. And there was a conversation that occurred -- I
18 think Mr. Simmons brought up the issue of unlicensed
19 contractors.

20 And here we have a situation where Mr. McAtee, a
21 friend of the owner of the property, was engaged in a
22 remodel of the premises. There was a very major structure
23 which they refer to as the game room. It was a log-type
24 structure. There was a lot of equipment in there. There
25 were a lot of game trophies in there and so forth. And it

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1 was being remodeled in the spring of 2003, apparently with
2 the remodel being supervised by Mr. McAtee.

3 We also know because the testimony is in your record
4 that they were purchasing all of the material for this
5 remodel at the Little Mountain Hardware store which was
6 right near there. And at the Little Mountain Hardware
7 store, which is a small store, you know, for local folks,
8 what they do when they have a big remodel like that going
9 on is they have a receipt book which they use specifically
10 just for that one job. And when somebody comes in -- in
11 this case, Mr. McAtee for the Scheel job -- he gets out
12 the Scheel receipt book, they fill out the receipt book,
13 he takes what he needs and he leaves. And so as the job
14 goes along, the receipts build up in chronological order.
15 You know, you have receipt 1, you have receipt 2, you have
16 receipt 3. And you know that one is purchased before the
17 other, and they're filled out by the person who is
18 purchasing things. We know that for the Scheel job
19 electrical wire was purchased. You have the receipt in
20 these materials. We know it was purchased by Mr. McAtee.
21 We know that they pulled no permit to do any electrical

22 work at the job.

23 Now, Ms. Mortinson misspoke. She said that Mr. Upton
24 testified that there was no electrical work going on.

25 Mr. Upton didn't testify to that. Mr. Upton is an honest

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1 man, and he testified only to what he knew, which was
2 there was no permit. And so there was no permit to do any
3 electrical work. But that doesn't mean no electrical work
4 was going on.

5 Mr. Shaw testified that when he was there, the room
6 was wired, there were outlets, it was up and functioning,
7 but all of the outlet covers were off, all of the covers
8 were off of the switches.

9 And Ms. Hunt, the girlfriend of the property owner,
10 she testified to the same thing. Now, she did say there
11 was no electrical work going on. But let's be serious.
12 Let's put this in context. They've got a remodel in the
13 spring of 2003. During that remodel, they arrange for ADT
14 to come out and put in a low-voltage alarm system. ADT
15 does everything it's supposed to do. It pulls a permit.
16 It sends out a licensed person. He does the job the right
17 way. He goes away.

18 A year later they get citations in the mail. And how
19 did the citations happen? The citations happened because
20 a year after this remodel project, the structure burnt
21 down. Probably an electrical fire. There was an
22 insurance claim. There's no doubt about that. The
23 insurance lawyer attended our hearing. His appearance is
24 in the materials.

25 Now, Mr. Upton agreed and admitted that when you have

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1 a fire like this, there is a motive on the part of the
2 property owner to be concerned about getting his claim
3 satisfied by the insurance company. Now, did they
4 ultimately succeed in doing so? Probably so. They
5 probably managed to convince the insurance company to pay
6 the claim. That's why the insurance company
7 representative was at our hearing. Did they know they
8 were going to be able to convince the insurance
9 representative to pay the claim right after the fire when
10 they were calling the Department a year after the job that
11 ADT had been performing and asking -- remember, if you go
12 back and piece together the testimony, the way this
13 occurred was Mr. Scheel called the Department and asked,
14 "Can ADT install high-voltage wire?" And he was told,
15 "No. They're not licensed to do that." They then call
16 back later and say, "Hey, ADT installed high-voltage
17 wire." Interesting.

18 Now, why are the dates important? The dates are

19 critical.

20 And by the way, on this subject of the burden of
21 proof, the evidence here is overwhelming that ADT did
22 nothing wrong. The likely culprit I believe is
23 Mr. McAtee, but that's not up to us to prove.

24 Let's look at the evidence. Mr. McAtee submitted
25 this statement (indicating) to the Department. What's

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1 really important about this statement is that he goes to
2 the trouble of saying -- and this is in your materials,
3 page 236 -- he goes to the trouble -- and this is
4 generally how you catch people in lies. Perry Mason is
5 not how it happens. They don't throw their hands up in
6 the air at the hearing and go, "You've got me. I lied."
7 Usually they exaggerate. And then you come back and you
8 are able to trap them in their exaggeration or their
9 embellishment. That's exactly what Mr. McAtee did.

10 Mr. McAtee undoubtedly knew, "Gee, I purchased some
11 high-voltage wire. It's in the receipt book. I better
12 find a way to explain it." So he pins it on ADT.

13 He says in his statement here that he helped move
14 objects and so on, and he specifically says that the ADT
15 installer was finishing installing the security system.
16 He requested that he needed 12/2 wire to finish the
17 installment he says -- installation. "So I went and
18 charged a roll of wire at the hardware store." Okay? And
19 so he says that when the ADT installer is there, he asks
20 for wire, McAtee helpfully goes and gets the wire that
21 very day, brings it back, it's installed. So the date is
22 pretty important. And we didn't put these words in his
23 mouth. He came up with this story.

24 So let's look at the receipt. The receipt is in your
25 book too. This is page 226, Exhibit 1. And you'll see

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1 the receipt is not dated. And I apologize; this is not
2 the greatest copy. But there is a receipt, an invoice
3 number down here, a receipt number. And I got to thinking
4 when I received this information from the State, I
5 thought, boy, you know, it's really coincidental that this
6 receipt isn't dated. And our installer is just swearing
7 to me, "I didn't put any high-voltage wire in there."
8 And, you know, of course, I -- we're going to get to this
9 later, but think about the logic of this.

10 The logic of this is that our installer goes out to
11 this place, and in order to save -- the argument is in
12 order to save himself another trip -- which by the way he
13 would get paid for. So what is he saving himself from?
14 He drives to there or he drives to somebody else. He's
15 going to get paid for either trip.

16 But in order to save himself from this paid trip, he
17 takes the risk of doing what he knows is a dischargable
18 offense from the company, what he knows could get him
19 cited, and he installs a free electrical outlet for them.
20 Does this make any sense? Of course it doesn't make any
21 sense. But it also didn't happen. Because what we know
22 is that this receipt which Mr. McAtee centered his story
23 on is -- it's after the fact. It's after ADT was at the
24 property for the last time. So this wire which Mr. McAtee
25 says is the wire that was installed was purchased after

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1 ADT was there for the last time.
2 How do we know that? We contacted the hardware
3 store. And the owner of the hardware store who has -- he
4 has no reason to lie on behalf of ADT. Dr. Scheel was a
5 good customer of his. He did a lot of business there. He
6 did this whole remodel through the Little Mountain
7 Hardware store. And Mr. Logan -- this is on pages 131 and
8 132 of your booklet -- Mr. Logan testified he's the
9 proprietor of the Little Mountain Hardware store. He said
10 that receipt number -- the last numbers are 20 here. But
11 this receipt isn't dated. But the receipt immediately
12 before it in the book is dated the 13th of May. And he
13 also said, what's more, "That receipt was probably rung up
14 on the 17th, so I'm pretty sure there wasn't any receipt
15 that is after that. This 14020 would have come after the
16 17th."
17 Because the way they do it there is apparently the
18 customers come in, they fill these receipts out by hand,
19 and then at some later date he testifies at the end of
20 every week they take the receipts for the week and they
21 ring them into the register. Why they do it that way I
22 have no idea. But that's how they do it at this place.
23 And so he says, "Probably 14020 shows a purchase from
24 the 17th through the 24th." But at the very least we know
25 that it was the 13th or later because receipt number 19 is

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1 dated the 13th. So 20, which follows it, it's later in
2 the book, it's got to be the 13th or later.
3 Why is that important? That's important because we
4 know that the ADT installer was at the premises on only
5 two dates. Everybody agrees with that. Nobody testifies
6 differently. What were those dates? The 10th and the
7 12th.
8 Mr. Shaw testifies that it was the 10th and the 12th.
9 Wendi Hunt, the girlfriend of the property owner, she
10 says, "He was there on Saturday," which is the 10th, and
11 then, "Yes, I can't say he wasn't there on Monday. I
12 don't know for sure what day he was there." That's the

13 best they've got in terms of trying to dispute this.

14 Okay?

15 But we've got a lot more than that. We've got the
16 installation acceptance form which was -- it's in your
17 packet, page 262, Exhibit 1. This was left at the
18 premises when Mr. Shaw left the premises for the last
19 time. You'll note it is dated 5/12. Mr. McAtee in his
20 testimony admitted that when the ADT installer left, he
21 left paperwork for the homeowner. The homeowner has a
22 copy of this. It's dated 5/12.

23 Well, somebody could say, "Okay, well, they got the
24 date wrong." Well, this you can't get wrong. Because
25 remember, the logic is -- the logic of this case is there

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1 wasn't any electricity to power the system until
2 Mr. McAtee supposedly went and got this wire. Well, in
3 that case, the system couldn't be sending signals to the
4 monitoring center, could it. But it was. How
5 coincidental.

6 Here is page 263, Exhibit 1 -- I'm sorry, Exhibit D,
7 page 1 of Exhibit D. And the testimony at the hearing was
8 that this document -- you'll see all these dates out here:
9 5/12/03. There's a whole bunch of signals here. That's
10 because on -- when the system is installed -- once the
11 system is installed, what the installer does is once he
12 gets the system up, he starts sending a bunch of signals
13 into the monitoring center and talking to them to make
14 sure that it works. Common sense, right? So he was there
15 twice, the 10th and the 12th.

16 Here's the second date he was there: May 12th.
17 These by the way -- you'll find the testimony in your
18 packets. There was testimony that the way these things
19 originate on a central computer in Aurora, Colorado, which
20 is governed by national regulations. You can't modify it.
21 These are not manually entered. These result from
22 electronic signals that are received over the phone lines.
23 And what this shows is that from the Scheel residence, on
24 5/12 all of these signals were received.

25 And what the testimony was by the ADT folks at the

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1 hearing was they could tell from the -- from the index
2 that these signals came from the game room. That's on the
3 12th. These signals -- these are also pages of Exhibit D
4 -- show that the other date when there were a lot of test
5 signals was 5:00 p.m, which was Saturday.

6 And the testimony was -- there are two structures
7 here. There's the house, and then there's this game room
8 adjoining structure which is what subsequently burnt down.
9 On the 10th when the installer came out there, he put in a

10 new system in the house and tested it. And then he didn't
11 have everything he needed to finish the game room, so he
12 came back on Monday and finished it and tested it, and
13 here (indicating) are the signals. There's no way these
14 signals could occur unless there was power available to
15 the unit.

16 Okay, so how do we account for this? Well, here is
17 what I would like to suggest. There are a number of
18 different indicia that I think people should be looking at
19 regarding the Administrative Law Judge's decision, which
20 by the way I think was a very well reasoned decision.

21 First, the credibility of the witnesses. There are
22 only two witnesses who have any firsthand knowledge
23 regarding the installation of the ADT system. Only two.
24 Mrs. Hunt -- Ms. Hunt has no firsthand knowledge. And
25 this is critical. Ms. Hunt's knowledge is completely

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1 secondhand hearsay knowledge.

2 This (indicating) is page 204 from Wendi Hunt's
3 testimony. I asked her: "And what, to the best of your
4 understanding, was Mr. McAtee's role ... in the
5 installation of the hard-wired system ...?" And I'll get
6 to this hard-wired thing.

7 Going on. And down here she says: "I was not here
8 at the time, so anything that I would say would just be
9 what Mr. McAtee told us," et cetera.

10 And she testified at another point during the hearing
11 that she wasn't there at the time of his second visit. So
12 she cannot say -- let's say -- let's say that a new outlet
13 was put in. I don't think it was, but let's say that it
14 was. She doesn't know whether Mr. McAtee did it or
15 Mr. Shaw did it. She has no idea. She wasn't there. She
16 only knows what Mr. McAtee told her.

17 So this entire case hinges on the credibility of
18 Mr. McAtee versus the credibility of Mr. Shaw. Attorney
19 General Mortinson indicated that we should pay attention
20 to this credibility issue and to motive she said.

21 And I'm going to -- I already addressed motive when I
22 was talking about the issue of Mr. McAtee's motive.
23 Remember, he did work on this structure. We know that he
24 purchased the wire. The structure subsequently burnt
25 down. He had a motive if he did unlicensed electrical

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1 work there. We don't know whether he did or not. The
2 property owner obviously had a motive because their
3 structure burnt down and they need to pin it on somebody.
4 So that's motive.

5 But credibility? Mr. Shaw testified -- you will note
6 that Ms. Mortinson in her presentation did not cite one

7 instance of Mr. Shaw saying anything which was
8 inconsistent, internally inconsistent, inconsistent with
9 the documents, didn't make sense. I mean, she just flat
10 just rejects it. Not for a reason, just because, well,
11 he's probably lying. She has nothing to show that he's
12 lying.

13 On the other hand, Mr. McAtee, who was the only other
14 person who was there when this was done, everybody has to
15 admit that he lied. His statement says he purchased the
16 wire the day that it was installed. The wire was
17 purchased after the installation. He lied. Period. So
18 he has no credibility.

19 And that's what the Administrative Law Judge decided.
20 We have documentary evidence. I just showed it to you.
21 You know, signals coming in after the wire was purchased.

22 But logic, let's not forget about logic. Mr. Shaw
23 has been doing this job. He's the ADT installer. He's
24 been installing these sorts of systems for 18 years. Not
25 all with ADT, only the last six or something like that

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1 with ADT. I might have that number wrong about the six,
2 but not the 18.

3 Okay, so he testified that the way you install these
4 systems -- and it makes common sense. You go out there.
5 The first thing you do is you look at what you're supposed
6 to be putting in. If the property owner is there, which
7 Mr. Scheel was the first day that Mr. Shaw got there --
8 you get ahold of the property owner, you go around and you
9 figure out, "Okay, I'm thinking of putting this here and
10 that there and this here. Is that all going to be okay?"

11 And Mr. Shaw testified that on that very first he --
12 and he said you always do this. And again, common sense.
13 You figure out where are the power sources, where are you
14 going to plug this thing in. And you'll -- because among
15 other things you have to make sure that what you're
16 plugging it into is not an outlet that will be turned on
17 and off with a switch, because if it is that's going to
18 raise havoc with this alarm system.

19 You can't put an alarm system in and then turn off
20 the outlet that powers it. That's not going to be a very
21 effective alarm system. So one of the first things you do
22 is you, you know, you scope out where are you going to
23 install everything and what are you going to plug it into.

24 Okay, now, this fellow who's been doing this for 18
25 years, he's going to go there on the 10th, install a bunch

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1 of stuff. He's going to go there on the 12th, install a
2 bunch of stuff. And then he's going to suddenly go, "Oh,
3 my gosh, there's no place to plug this in." Does that

4 make sense? Of course, it doesn't make sense. It's not
5 logical at all.

6 Another subject that I want to make sure doesn't
7 confuse people, this whole issue of the system being hard
8 wired, hard wired is not the same thing as high voltage.
9 The system that was put into the game room -- and this is
10 what Mr. Shaw testified, and there's nobody that testified
11 contrary to this. Mr. Shaw testified that when he went
12 out there, he determined the first day that a wireless
13 system -- this is what the homeowner wanted. The
14 homeowner wanted one panel to control both his home and
15 the game room. And so what he wanted was a panel in the
16 house where you could punch buttons, and that would
17 control the system out in the game room. What Mr. Shaw
18 determined when he got there on the 10th was "That's not
19 going to work. You're going to need to put a separate
20 panel out in the game room."

21 Now, whenever he determined that, the point is that
22 the panel needs power. So when you put a panel out there,
23 you have to plug it into something.

24 But here's the thing: And this was -- Mr. Upton
25 testified to this. And Mr. Shaw would completely agree.

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1 This is how these panels work. These panels -- and
2 probably everybody here is familiar with these control
3 panels where you punch in the buttons. Well, the panels,
4 some of the sensors that are out there sending signals to
5 the panels, some of them are wireless, some of them are
6 wired. The wires are low-voltage wires. That's what
7 Mr. Shaw is licensed to install.

8 Moreover, the wire going from the panel to the
9 electrical outlet from which it will get its power, that's
10 a low-voltage wire. And Mr. Upton testified at the
11 hearing that the way that is done is -- and I didn't fully
12 understand it at the time, and I had asked him the
13 question, and he explained. The way that they do it is
14 they run that low-voltage wire from the panel to wherever
15 they're going to plug it in, wherever there's an outlet.
16 And then they put a transformer on that low-voltage wire,
17 and then they plug it into the outlet. And that's
18 perfectly legal. That's covered by ADT's license. That's
19 a low-voltage line.

20 So when Ms. Hunt says it was a hard-wired system,
21 yeah, it was. Everybody agrees to that. It was a
22 hard-wired, low-voltage system. If she thinks that there
23 was a wire extending from the panel to someplace and
24 plugged in, there was. There had to be.

25 Okay. Now, here's the other thing too. Why would

1 Mr. Shaw since -- I just explained to you how you go about
2 connecting this panel to an electrical outlet. You can
3 connect it to an electrical outlet -- you know, I can
4 connect it to an electrical outlet over in that corner
5 over there (indicating). It doesn't have to be right next
6 to the panel. You run the low-voltage wire to wherever
7 it's going to be hooked in. You attach the transformer.
8 You plug it in. So why would Mr. Shaw -- even if -- even
9 if he put the panel in a place where there wasn't an
10 outlet, why would he then risk getting fired, do it for
11 free, and risk getting cited when all he needs to do is
12 run the wire, the low-voltage wire, a little bit farther
13 to plug it into someplace else? That doesn't make sense.

14 So the bottom line here is that the State has
15 absolutely no evidence other than Mr. McAtee's testimony,
16 which is completely unbelievable. No evidence that ADT
17 installed high-voltage wire at this location. A much more
18 credible hypothesis is that Mr. McAtee is trying to cover
19 his own problems because he knew that he had purchased
20 high-voltage wire, and maybe they installed some outlets
21 or whatever without a permit; I don't know. But we
22 certainly didn't.

23 And so I would ask the Board to uphold the
24 Administrative Law Judge's very well reasoned decision.
25 Thank you very much.

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1 CHAIRPERSON ASHFORD: Thank you. Ms. Mortinson, do
2 you have any further comments?

3 ASSISTANT ATTORNEY GENERAL MORTINSON: No, Madam
4 Chair, I don't believe I do.

5 CHAIRPERSON ASHFORD: Thank you.
6 The Board's pleasure?

7 BOARD MEMBER SIMMONS: I'm sure this is very
8 unexpected, but I have a few comments.

9 ASSISTANT ATTORNEY GENERAL MORTINSON: A shocker.

10 BOARD MEMBER SIMMONS: There are several things that
11 as I was reading this transcript stood out to me and I
12 think should stand out to the rest of the Board.

13 Number one is this is a low-voltage system. As
14 Mr. Larson just said, all it does is plug into a
15 transformer, a low-voltage wire runs over to the main
16 control panel, and that's how it gets power. Why would
17 you need line-voltage wire to do that? Why would you run
18 low-voltage wire to a control panel? You don't need -- or
19 excuse me -- why would you run line-voltage wire to a
20 control panel? You don't need line-voltage wire there.
21 Why would they need 12/2 to run to the control panel?
22 That's what this guy said -- McAtee.

23 Go back to a couple other things. One, there was a
24 permit bought for that building for the initial

25 construction of it for the wiring for that for the rough

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1 -- or excuse me -- for the temporary service. There was
2 never a permit bought nor an inspection done on this
3 building for the wiring, for the line-voltage wiring. The
4 inspector testified to that fact. There's nothing in here
5 that says -- and you can clarify -- and Ms. Mortinson's
6 thinking that I'm wrong -- but if I read this testimony
7 correctly, there was never a permit bought nor an
8 inspection performed on the line-voltage wiring.

9 Another issue with this building, when they're
10 remodeling it, she said they're putting wood on the walls
11 over the existing system, over the existing plugs, outlet,
12 switches. All the lights were pulled down. I have a
13 question. When you put wood on a wall, you're supposed to
14 use what's called a spark ring or an extension box. Were
15 any of those installed anywhere? Nobody knows because
16 there was no inspection requested for any of the
17 line-voltage alterations in that building.

18 And I just have some very serious concerns. I also
19 have some concerns with Mr. McAtee's testimony. Reading
20 through it, I saw contradictions where he contradicted
21 himself several times.

22 I find it interesting that he said -- page 52 of the
23 book, he says he knows the rules, but he didn't say
24 anything to anybody when he saw somebody wiring Romex
25 supposedly in this house.

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1 Page 66, he says he knows how to run the wire. I
2 find it interesting that he says that he doesn't have an
3 electrical license, but that he helps friends. That's his
4 testimony. I just find him to be totally incredible --
5 incredible as a witness in this case. And in my opinion,
6 the State doesn't have much to go on here.

7 I think that -- I agree with Mr. Larson in this case.
8 I think that Mr. McAtee is trying to cover his rear end,
9 and they just saw an opportunity to possibly nail somebody
10 down with pulling some wire.

11 There was other wire bought. They had testimony that
12 other wire was purchased at other days, other times. What
13 was -- who did that? Did they call the AT&T guy -- or the
14 ADT guy to come back and install that? I don't think so.

15 I just find this -- his testimony totally incredible.

16 ASSISTANT ATTORNEY GENERAL MORTINSON: If I might
17 answer, I'm uncertain about the electrical inspector about
18 no inspection or permit for the game room.

19 On page 121, he denotes a medium-voltage permit at
20 the address 10/20 of '97. And he says January 21, 1998,
21 the game room was completed. I don't know how he would

22 know if it was completed if he did not inspect the
23 electrical installation for the game room at that time.
24 What he did say, there was an inspection called for
25 of the ADT installation, but it wasn't done because the

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1 inspector couldn't find the address.
2 So I'm not sure, Mr. Simmons, if that is in direct
3 reference to what you said about no inspection of the game
4 room. I believe Mr. Upton testified he did do it in 1998.
5 BOARD MEMBER SIMMONS: Where do you see that he
6 bought a permit for that game room and that the wiring was
7 inspected?
8 ASSISTANT ATTORNEY GENERAL MORTINSON: "And was there
9 a medium voltage permit at that address?"
10 "Yes."
11 SECRETARY FULLER: What page?
12 ASSISTANT ATTORNEY GENERAL MORTINSON: 121 of the
13 record, the numbers at the bottom of your transcript, not
14 the numbers of the transcript itself. The 121 at the
15 bottom number is part of Mr. Upton's testimony.
16 BOARD MEMBER PREZEAU: Madam Chair, may I interject?
17 CHAIRPERSON ASHFORD: Oh, Tracy, yes, please.
18 BOARD MEMBER PREZEAU: I would like to call
19 everybody's attention to the testimony on transcript page
20 number 103 but record number page 119, because I think it
21 clearly states -- and I agree with Jim -- that -- and this
22 is Gary Upton testifying that -- "Okay. On that building,
23 which was called the game room, there was a permit
24 purchased on 10-20 of 1997 for a temporary power supply to
25 build the building and wire it. Okay."

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1 That's the same permit that's being referenced on
2 page 121, and it's the only permit that I understand is
3 being purchased to cover the temporary power and not the
4 final inspection of the game room.
5 BOARD MEMBER SIMMONS: Thank you, Tracy. That is
6 exactly the way I read it too. And I made a note as I was
7 reading through here that it just says "temporary wiring."
8 It does not say anything about the final inspection or the
9 wiring of the building. It just says "a temporary power
10 supply." And that's what the permit said.
11 And he -- the inspector actually looked to see -- he
12 called his office to see if there was any other permits,
13 and they could not find a record of any other permits for
14 that building. The only one they have was a temporary
15 wire permit and then the permit for the inspection of the
16 ADT system.
17 CHAIRPERSON ASHFORD: Any further comments?
18 BOARD MEMBER TRICARICO: I have a question actually.

19 And I'm not sure whether Mr. Larson or Shelley could
20 answer this for me. Is there a difference between a
21 wireless panel and a wired panel?
22 MR. LARSON: It's what I explained --
23 BOARD MEMBER TRICARICO: Well, I mean, I understand
24 how the power gets to a wired panel.
25 MR. LARSON: Right. But also the sensors. Some of

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1 the sensors can send signals, you know, wirelessly and
2 some have to be wired in. And it's a low-voltage line if
3 you wire to the sensor. Some are wired and some aren't.
4 BOARD MEMBER TRICARICO: I'm looking at Wendi Hunt's
5 testimony, and she mentions that the panel -- or she
6 testifies that "The panel for the wireless installation
7 was placed by the" --
8 MR. LARSON: What page are you on?
9 BOARD MEMBER TRICARICO: I'm on it looks like page
10 203 of the handwritten transcript number. It says, "The
11 panel for the wireless installation was placed by the
12 entry door. And for some reason the signal would not go
13 between the two buildings, which forced him to come back
14 out on a different day to put in a hard-wired system into
15 that building."
16 Taking that as what it is, did that mean that that
17 wireless panel that was placed by the entry door, did it
18 require a transformer to heat it up?
19 MR. LARSON: Two things -- several things in response
20 to this.
21 One is please keep in mind that there is absolutely
22 no foundation in here for Ms. Hunt knowing anything about
23 electrical things. So when she makes a comment about what
24 something is, I'm not sure that there is a proper
25 foundation that she's accurate about whether it's wireless

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1 or not wireless. So that's a comment.
2 The testimony of Mr. Shaw was that the only panel
3 that was installed out in the game room was a wired panel.
4 He talked about it.
5 I read -- in fact, when I asked her the question, I
6 talked about hard wired. Because it was one where you
7 could run a -- you could run a low-voltage line and put it
8 on a transformer and plug it in. But that's how you would
9 power up a wired panel.
10 BOARD MEMBER SIMMONS: Maybe I can help answer that
11 question.
12 They do make completely wired and wireless systems,
13 Fred. And there is a low-voltage, just a non-wired
14 control panel that can be installed, and it's just battery
15 operated. Okay? That is -- part of a wireless security

16 system, sometimes the master control is -- and you can --
17 then the convenience of that is you can put them anywhere.
18 But evidently that controller wouldn't work properly,
19 wouldn't communicate. The building was too far away or
20 something, so they put the hard-wired type in and needed a
21 power supply obviously for that.

22 BOARD MEMBER TRICARICO: That is my point exactly is
23 the fact that on the first visit out there where Mr. Shaw
24 had walked through the installation, there may not have
25 been a need for him to identify a power source in the

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1 second building on the presumption that he would be
2 installing this battery operated panel.
3 On the second visit back there when he realized -- at
4 least from the testimony I read -- that this wireless
5 panel did not work, then there became a necessity to have
6 power installed. And so that leaves me to believe also
7 that -- back on page 206[] -- once again to Wendi Hunt's
8 testimony, she was asked, "So, to your understanding, was
9 there some work that needed to be done from the tool room
10 side for that system?"

11 And her response was, "Just a wire run to get power
12 to the panel."

13 As an installer myself -- I'm not an alarm installer,
14 but I've been doing it a long time -- I plan out a job and
15 have gone through the work and all of a sudden at the end
16 of the wire I go uh-oh, I didn't count on this particular
17 instance that came up. So it leaves me to believe that
18 there is some doubt about the fact that Mr. Shaw did not
19 -- that Mr. Shaw had this planned out to where he realized
20 the day before that he would need power for this new
21 panel. So I tend to believe that there is reason for
22 Mr. Shaw to -- I'm questioning his credibility also here.

23 And the reason I question that is the fact that you
24 had mentioned earlier about, you know, to what motive
25 could he possibly have, he gets paid by the hour and he

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1 gets paid to drive out to the job site. Most technicians
2 take their responsibility with their companies very high
3 and they want to get the work done in a quick amount of
4 time and make it profitable. So there may have been some
5 imperative to him not to have to return out there the
6 third day.

7 And as far as the issues about when the wire was
8 purchased, I don't put any credibility at all into the
9 bookkeeping by the little hardware store. I mean, I see
10 quite a few discrepancies there where -- I don't trust
11 their records. I don't believe they kept them very
12 accurately. I don't believe that I could rely on anything

13 to tell me when the wire was purchased.
14 And it also appears that the job that was done on the
15 second day at the trophy room didn't get completed until
16 4:00 in the afternoon. So the installer spent the whole
17 day there. So it may have very well been that part of
18 that task he had to accomplish that day was when he
19 realized he didn't have power to where he placed the panel
20 that he would have to accommodate that.
21 I don't see where you have proven the case that he
22 did not. I believe you did prove the case that maybe he
23 did not. But I do believe the burden of proof would lie
24 with you to prove that he didn't. I believe it's a very
25 difficult situation because I don't see how you could do

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1 that.
2 MR. LARSON: Okay. May I address that?
3 BOARD MEMBER TRICARICO: Please.
4 MR. LARSON: First of all, on the burden of proof, a
5 preponderance of the evidence is a tether difference.
6 It's not -- you don't have to prove beyond a reasonable
7 doubt like in a criminal case. So is there a
8 preponderance of evidence one way or the other.
9 On the issue of Mr. Shaw, the installer, having two
10 trips out there, Mr. Shaw's testimony was that the
11 original intention was to do the job on the first trip,
12 just one trip. The fact that he had to go back a second
13 time was because of the fact that when he went out there
14 the first time he discovered this need to change the
15 configuration. He testifies to this in the materials.
16 And so it wasn't a situation where he was planning on
17 doing this in two days and he goes out there the second
18 day and he gets surprised. He goes out there thinking
19 he's going to do it in one day. He walks through the
20 property with the homeowner.
21 They -- you know, Ms. Hunt testifies that he
22 installed something and figured out that it didn't work.
23 But in any event it was determined that the wireless panel
24 setup, having it in the house and having that control what
25 was in the game room wouldn't work, and so he determined

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1 no, I'm going to have to come back and do the game room on
2 Monday.
3 That doesn't mean that he's there on the premises.
4 He figures out -- he goes into the game room. He figures
5 out what he's going to need. So he goes away, gets what
6 he's going to need and comes back.
7 Now, Ms. Hunt says just a wire run to get power to
8 the panel. That wire is a low-voltage wire. There's
9 nothing wrong -- I mean, Mr. Shaw can run a low-voltage

10 wire. This does not prove their case at all. There's no
11 reason that he would --

12 Let's put it another way. Their story is that an
13 outlet was installed. Generally you don't run the wire
14 for an outlet, you know, outside the wall where she's
15 going to see it. Low-voltage wires, those little bitty
16 wires, you often see the installations done where you can
17 see those wires.

18 So you'll notice she doesn't say -- identify it as
19 gauge because, of course, she can't anyway. She saw a
20 wire. She may have assumed it was like any other wire
21 like an appliance. She doesn't know.

22 BOARD MEMBER TRICARICO: Thank you.

23 ASSISTANT ATTORNEY GENERAL MORTINSON: I'd like to
24 clarify too. I don't believe there's any testimony about
25 an outlet installed. I believe the testimony was they

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1 were remodeling the room. Outlet covers were off. And
2 there was no outlet where the panel was installed in the
3 back room of the -- back wall of the trophy room that kind
4 of -- as I remember the testimony -- the wall was shared
5 with the tool area. I don't believe there was any -- I
6 don't believe there was any outlet installation, just for
7 clarification.

8 (Pause in proceedings.)

9 CHAIRPERSON ASHFORD: Are you through, Shelley?

10 ASSISTANT ATTORNEY GENERAL MORTINSON: I'm sorry, I'm
11 thinking. That's the oil -- the sound of rusty gears you
12 hear.

13 I have a kind of a question and kind of a statement.
14 I believe that the statement is that if there is a
15 transformer plugged into an outlet, there should be a "no
16 power" signal when the cord was disconnected and plugged
17 into the permanent outlet. Can anybody shed any light on
18 that?

19 BOARD MEMBER SIMMONS: Say that again?

20 ASSISTANT ATTORNEY GENERAL MORTINSON: Perhaps I --
21 could I call on Ron?

22 Ron, would you like to ask a question or make a
23 statement in connection with the testimony you've heard so
24 far?

25 MR. LARSON: Excuse me, may I make an objection here?

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1 Because -- I don't know what Mr. Fuller's going to say.
2 And I know he's highly qualified. But the problem that we
3 have is that this hearing is supposed to be decided only
4 on the testimony that we already have.

5 CHAIRPERSON ASHFORD: And I will agree with that.

6 I do have one question. You said the structure was

7 destroyed. On what day was the structure destroyed?
8 ASSISTANT ATTORNEY GENERAL MORTINSON: As far as they
9 can determine, around June of 2004.
10 And I believe -- again, I've reviewed the testimony.
11 I believe that there is at least one statement that was
12 made that says there is no -- they don't know the cause of
13 the fire.
14 CHAIRPERSON ASHFORD: So the fire was in June of
15 2004. Citations were written in August of 2004, correct?
16 ASSISTANT ATTORNEY GENERAL MORTINSON: Yes, they
17 were.
18 BOARD MEMBER SIMMONS: May I address Fred's question
19 real quick and his comment?
20 One thing, Fred, that I want to ask is: If you are
21 installing a low-voltage alarm system, which is what this
22 is, and you have a controller mounted on the wall that
23 takes power as a low-voltage source, it takes 18 volts to
24 this unit, you have to plug a transformer in somewhere to
25 get that 18 volts. Let me ask you a question: Why would

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1 a person run and go get line-voltage wire, make a special
2 trip to get line-voltage wire to alter the line-voltage
3 system somewhere when he's a low-voltage installation
4 technician? That's what he does. That's what he has in
5 his truck. And that's what powers the system. Why
6 wouldn't he run a low-voltage wire from the controller 50
7 feet? If you have to go -- if that's your closest outlet
8 to plug into, why wouldn't you do that? I don't
9 understand how a person that is a low-voltage technician
10 would go get line-voltage wire and run that if he already
11 has low-voltage wire and that's what powers the system.
12 ASSISTANT ATTORNEY GENERAL MORTINSON: One point of
13 clarification before Mr. -- Fred answers. He was working
14 for ADT low voltage; however, he was a journeyman
15 electrician.
16 MR. LARSON: However, he also testified he did not
17 have any high-voltage equipment or staples or wires or
18 outlet boxes or anything else because that's not what they
19 install.
20 BOARD MEMBER SIMMONS: That's another point. He
21 didn't put an outlet in. What did he take the
22 line-voltage wire to? Did he plug it into the back of his
23 low-voltage controller? Where did he take this
24 line-voltage wire to? Where did it terminate to? There
25 was testimony that nobody saw him install an outlet.

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1 Nobody bought an outlet. What did he terminate it to?
2 Just a question.
3 I have a lot of issues here.

4 BOARD MEMBER TRICARICO: May I first address --
5 BOARD MEMBER SIMMONS: Please.
6 BOARD MEMBER TRICARICO: As far as the running of the
7 wire, you know, it appears to me that at first -- and
8 based on the testimony -- that first there was a wireless
9 system installed, and that was probably installed -- if it
10 were me, I would install it to physically the closest
11 point to where the receiver would be for that, which would
12 have been by the front door I'm assuming. Since that
13 didn't work, then we needed to put -- and there was
14 probably no power outlet there I'm assuming. Then a wired
15 system had to be installed. A different location was
16 picked for that. Now, the first thing I would have done
17 is the fact I would make sure there was power by where I
18 was installing this. But I don't know that to happen.
19 As far as to why I would have put in an outlet, the
20 fact is sometimes you have great difficulty -- and this
21 was a log-type construction -- of actually running the
22 wire 50 feet or 70 feet or 20 feet. So I don't know -- I
23 can't give you a direct answer on that because there's
24 nothing in the testimony to it.
25 But it did seem to me that some changes were made,

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1 and I do know when changes are made sometimes mistakes are
2 made when you're doing this type of work.
3 CHAIRPERSON ASHFORD: Mr. Hamilton, you had a
4 comment?
5 BOARD MEMBER HAMILTON: I did. You know, I'm just
6 trying to get this all straight in my mind as to what
7 possibly happened out there.
8 I see many security systems installed, whether
9 they're hard wired or wireless. Usually the controller
10 goes somewhere out of the way, plugs into a closest
11 outlet. I mean, these service guys want to get in, get
12 out as fast as they can because time is money. So usually
13 they put a control panel wherever the power is so that
14 they don't have to run any power. That's why ADT doesn't
15 bother to get a (01) administrator license. And then
16 whether it's hard wired or wireless, do they take
17 low-voltage wire or is it just RF to the keypads at the
18 doors, to the windows and so forth. That's just what I
19 see normally.
20 Now, I need to ask -- make sure I got these dates
21 straight. May 12th was the day that Mr. Shaw was done
22 with the project, left the project, the left was work --
23 the system was in working order, and he had full reason to
24 believe that this would be inspected by a State inspector
25 very soon after that. Is that correct?

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1 MR. LARSON: That's correct.
2 BOARD MEMBER HAMILTON: And then on June 20th, the
3 building burns down. And then --
4 MR. LARSON: I think it was almost a full year
5 before the building burnt down.
6 BOARD MEMBER HAMILTON: Okay, of the next year.
7 And then after the building burns down, the testimony
8 comes in that the ADT guy ran some high-voltage wire?
9 MR. LARSON: That's right. More than a year later.
10 BOARD MEMBER HAMILTON: And that comes from the guy
11 who supposedly bought the wire for him.
12 MR. LARSON: Correct.
13 BOARD MEMBER HAMILTON: So he didn't have any problem
14 with it for well over a year.
15 BOARD MEMBER SIMMONS: I got one other point to this
16 gentleman's credibility. If you read page 45 at the
17 bottom here, we're talking about Mr. McAtee's statement.
18 The question was: "All right" -- I'm starting on page 45,
19 line 17. "All right. Now, on the first page of your
20 statement you have a date of mid May. Do you have any
21 recall of a more specific date ...?" Now, we're talking
22 credibility.
23 He answers, "I know it was in May. I can't tell you
24 if it was before. I'm pretty sure it was either the
25 second week or actually the third week or the last week.

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1 In there somewhere. I can't tell you. I can't nail down
2 the date exactly when it was."
3 And he said on the next page -- it continues, "And I
4 went back, like I said, and looked through all my records
5 and stuff, because I normally document everything I do,
6 everywhere I go, but I don't have any documents that shows
7 what I did for that week or that month, other than ...
8 other jobs ... I worked on."
9 This is a guy that we're going to for our
10 credibility? He can't even tell if it was week one, two,
11 three or four of the month. But he remembers specifically
12 this guy doing this and pulling this one eight-foot piece
13 of wire that he went and bought. I really have a problem
14 with this guy's credibility. I really do.
15 And it coming up a year later as an issue all of a
16 sudden. And to be honest with you, I'm amazed that L & I
17 would take a case like this and push it this far. I am
18 just amazed. With the information that I see in here, I'm
19 just baffled by it.
20 Thank you.
21 CHAIRPERSON ASHFORD: Do we have -- a motion or a
22 question?
23 BOARD MEMBER NEWMAN: Let's call for the question.
24 BOARD MEMBER: Make a motion first.

25 CHAIRPERSON ASHFORD: Motion first.

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1 Motion

2

3 BOARD MEMBER NEWMAN: I make a motion that we call
4 for the question to either adopt or --

5 BOARD MEMBER SIMMONS: What's your motion, Geoff?

6 CHAIRPERSON ASHFORD: What's your motion?

7 BOARD MEMBER NEWMAN: I make a motion that we either
8 adopt or -- the ALJ's decision.

9 CHAIRPERSON ASHFORD: You're making a motion to adopt
10 the ALJ's decision?

11 BOARD MEMBER NEWMAN: Yes.

12 BOARD MEMBER: It would be to uphold.

13 BOARD MEMBER: Affirm.

14 BOARD MEMBER NEWMAN: Uphold the ALJ's decision.

15 CHAIRPERSON ASHFORD: Do we have a second?

16 BOARD MEMBER (D.A.) BOWMAN: Second.

17 BOARD MEMBER: I'll second.

18 CHAIRPERSON ASHFORD: Questions? We have a motion
19 and a second to affirm the ALJ's decision. All those in
20 favor signify by saying "aye."

21 THE BOARD: Aye (the majority).

22 CHAIRPERSON ASHFORD: Opposed?

23 BOARD MEMBER TRICARICO: Aye.

24 CHAIRPERSON ASHFORD: Motion carried.

25 ///

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1 Motion Carried

2

3 CHAIRPERSON ASHFORD: We will call a ten-minute
4 break.

5 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Madam Chair,
6 if I may make a point of order, you will need to sign a
7 final order on this matter, and I believe it's prepared by
8 the prevailing party.

9 CHAIRPERSON ASHFORD: Mr. Larson, you will need to
10 prepare a final order I understand.

11 MR. LARSON: Thank you. Thank you very much.

12 CHAIRPERSON ASHFORD: We'll reconvene at 11:55.

13 (Recess taken.)

14 CHAIRPERSON ASHFORD: We're about to reconvene our
15 meeting. Will everybody take their seats please.

16 I'm going to make a slight agenda change here. We
17 will move up Mr. Comstock's appeal. And that will follow
18 Mr. James Jolly's appeal.

19

20 Item 4.b. James Jolly

21

22 CHAIRPERSON ASHFORD: So Mr. James Jolly. Sir, would
23 you like to introduce yourself to the Board?
24 MR. JOLLY: James Jolly, low-voltage administrator
25 for Brennan Heating and Air Conditioning.

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1 CHAIRPERSON ASHFORD: I'm also going to have to ask
2 you to speak up and --
3 MR. JOLLY: Okay.
4 ASSISTANT ATTORNEY GENERAL SIMONS: Good morning,
5 Madam Chair and members of the Board. My name is Andy
6 Simons. I'm the assistant attorney general representing
7 the Department in this case.
8 Go ahead and launch in here?
9 CHAIRPERSON ASHFORD: Please.
10 ASSISTANT ATTORNEY GENERAL SIMONS: Thank you.
11 The Department's asking the Board to affirm the
12 proposed decision and order that was issued on March 9,
13 2006, in this case. That order, in turn, had affirmed a
14 Department citation that was issued December 9, 2004.
15 That's citation number E48188.
16 Brief -- I know the Board has had the packet to read
17 through. Just briefly what happened, Mr. Jolly was the
18 electrical administrator for Brennan Heating and Air
19 Conditioning. And he failed to ensure that all of the
20 electrical permits required to perform the work there were
21 purchased before the work was completed. Specifically --
22 the citation states specifically that on October 26, 2004,
23 he failed to purchase a low-voltage electrical permit
24 before installing a thermostat cable in a residence. In
25 doing this, he violated RCW 19.28.061(5)(d). And it was a

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1 second violation within five years, so the fine was \$850.
2
3 If the Board's interested in more factual basis, I'm
4 happy to go into that.
5 CHAIRPERSON ASHFORD: We'll hear from Mr. Jolly now.
6 MR. JOLLY: Okay, I don't want to waste a lot of
7 people's time here today. But I do want to say a couple
8 of things.
9 In this case and in some of these future cases I
10 think at some point the intent of the contractor has to be
11 taken into consideration. In this case, it was a new
12 construction house. We were in ahead of the electrical.
13 Obviously if we were kind of trying to sneak one behind
14 you, this wouldn't be the place to do it because the
15 electrical inspector would definitely be in behind us.
16 We're -- as you know, in the HVAC industry there's a
17 lot of noncompliance. We're one of the companies that try
18 to comply. We've taken the time to educate and train and

19 test our employees and myself as the administrator. We're
20 not using loopholes to go behind the system like many of
21 them are.

22 I think in this case, you know, the crime -- or the
23 punishment's not fitting the crime. To get a citation for
24 a clerical error to me is way too extreme. It seems to me
25 that there's plenty of companies out there, again, that

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1 are trying to circumvent the system. We're not trying to
2 do that. We're trying to comply. You know, we're
3 accurate over 99 and a half percent of the time, but
4 clerical errors happen. And I just don't feel like L & I
5 should hold us to a standard that they don't come close to
6 meeting as well.

7 And that's really all I wanted to say.

8 CHAIRPERSON ASHFORD: Thank you.

9 ASSISTANT ATTORNEY GENERAL SIMONS: Nothing further.

10 CHAIRPERSON ASHFORD: Does the Board have any
11 questions? Mr. Newman.

12 BOARD MEMBER NEWMAN: Mr. Jolly, the permits for the
13 four houses, were those four individual permits or three
14 individual permits? Did you buy in a block? Or how does
15 your gal handle that?

16 MR. JOLLY: Well, we -- no. We bought them
17 individually. Because they didn't break all at the same
18 time. They were consecutive. And she was mistaken
19 thinking there was only three, but there was actually
20 four.

21 BOARD MEMBER NEWMAN: Had you performed the work on
22 all of them by that time?

23 MR. JOLLY: That was the last one.

24 BOARD MEMBER NEWMAN: That was the last one. And it
25 didn't trigger a question from the field that that was the

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1 last one by then? I don't view it as just a clerical
2 error. I view it as a kind of a breakdown of your
3 process.

4 MR. JOLLY: Well, yeah. Obviously there was a
5 breakdown. We pull 250 to 300 permits a year. And in
6 this case we made a mistake. Just like I can cite plenty
7 of examples when L & I's made clerical errors on renewing
8 licenses. Or even this appeal here was mishandled, you
9 know. Nobody's perfect.

10 BOARD MEMBER PHILLIPS: I can sympathize with
11 Mr. Jolly that mistakes happen and there was certainly no
12 intent to deceive anyone.

13 I also feel that it is inconsistent enforcement when
14 the electrical contractor -- the inspector originally
15 thought the electrical -- power contractor had done that

16 wiring and was just going to write them a note or write
17 them a correction saying, "You need to get a permit for
18 this." Well, actually his -- and the inspector's
19 justification for not doing more because he said, "Well,
20 he had a permit. He just didn't pay all the fees." Well,
21 in my mind that's the same thing. He did not have a
22 permit to do the low-voltage wiring. Of course, he didn't
23 need it because he didn't do it. But the inspector was
24 looking at it like he's not going to make a big deal out
25 of it. He's not going to write a citation. He's just

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1 going to say, "Oh, you need to get that permit" or "pay
2 that fee for low voltage." And I'm wondering why the same
3 couldn't have been done for Mr. Jolly's company and said,
4 "We've been inspecting all these. You forgot this one."
5 Sent him a note or write him a correction and say, "You
6 need to take care of this one as well. You forgot it."
7 CHAIRPERSON ASHFORD: Mr. Simmons.
8 BOARD MEMBER SIMMONS: I also -- I am a contractor --
9 a small contractor. And I know that as a big contractor,
10 it has to be even worse trying to keep paperwork flowing
11 right and accounting for every "T" being crossed and every
12 "I" being dotted properly. I have missed getting a
13 permit. We're busy. Things happen. And it's not
14 impossible to think that it's simply a clerical error.
15 And I know that L & I has turned their focus a little
16 bit in the recent months, and this year really, to focus
17 more on getting things corrected rather than just simply
18 citing people automatically. And that's really where I
19 think their focus should be.
20 In this case as soon as they were alerted to the
21 error, they went and got the permit immediately. They
22 took care of it. It's not a situation in my opinion where
23 they were trying to get away with something. If they were
24 out on somebody's existing structure, and they were asked
25 to do a job, and they were pulling a new thermostat wire

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1 in in that case and thought "Ah, nobody's going to see us.
2 Maybe we just won't get a permit for this," that would be
3 a different story in my opinion.
4 This is a new construction. They know that a state
5 electrical inspector is going to show up on that job.
6 There's no question about that. There's no question that
7 they have to get a permit for the job. I don't think that
8 it was an intentional thing. I don't think that -- from
9 the testimony that I read in here, that it was something
10 that they were trying to get away with. "Man, we can save
11 some money, and we're just not going to get a permit on
12 this" and shove that one under the desk. Nothing like

13 that happened in my opinion. It was simply they forgot to
14 get a permit for this one. As soon as they were made
15 aware of that issue, they immediately took care of it,
16 rectified the situation properly. It's a low-voltage
17 wire. There was nothing wrong that I read in here that an
18 inspector came back and said, "Oh my God. You could have
19 caused a fire and killed somebody."

20 I just -- I think that L & I needs to be aware of
21 these things. They need to be proactive and say, "Look,
22 you know, you need to make sure this doesn't happen
23 again." Okay. But to automatically cite somebody just
24 for getting a permit on a new construction in this case in
25 my opinion is not necessary.

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1 BOARD MEMBER PARKER: Madam Chair, part of my concern
2 when I look at this is turning it around and saying it's
3 the -- our electrical department's responsibility to go
4 looking for permits. It actually is the administrator's
5 responsibility to make sure the permits are taken out.
6 And if we turn it around and say it's the Department's job
7 not only to -- if they pick this up, but to, say, write
8 your friendly warning tickets, how many quote/unquote
9 "warning tickets" do we ask the Department to do that, or
10 do we need a hammer at some point to say when you fail to
11 follow the rules, that there's a consequence for it. And
12 I have some concern about turning it around where the
13 Department has to do the enforcement and the Department
14 has to do the education which is part of their job, but
15 it's not entirely. There is a responsibility on the
16 administrator to make sure the permits are taken out.
17 And I do realize paperwork gets by people. And I
18 will admit to doing that myself. I'm concerned we're
19 trying to turn it around where it's the Department's
20 responsibility instead of the administrator's.

21 Thank you.

22 CHAIRPERSON ASHFORD: Fred.

23 BOARD MEMBER TRICARICO: I don't believe intent is an
24 issue here at all.

25 I don't believe, Mr. Jolly, your intent was to not

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1 get a permit. But I also don't believe the intent was an
2 issue here, as has already been phrased, with L & I. I
3 personally wish L & I would have written a warning for
4 this particular one. I think this was a perfect case for
5 the warning. But the fact of the matter is the inspector
6 made a decision to write a citation. I think our duty
7 here today is to view if that citation was accurately done
8 or not -- accurately written or not.

9 And I also believe the Board should be consistent.

10 We've had these kind of cases before us before, and we've
11 been very strict on it. And I do believe today we should
12 be strict on it also, and that this ALJ's decision should
13 be upheld.

14 CHAIRPERSON ASHFORD: Is that your motion, Fred?

15 BOARD MEMBER TRICARICO: No, I did not make a motion.
16 It was merely conversation.

17 CHAIRPERSON ASHFORD: Geoff.

18 BOARD MEMBER NEWMAN: Mr. Jolly, what was the first
19 offense for?

20 MR. JOLLY: The same thing. Again, we're pulling 300
21 permits a year. Mistakes happen.

22 I just think -- you know, I don't have a lot of hope
23 that this is going to get overturned. But I think maybe
24 in the future -- you know, an administrator needs to do
25 his job correct. Mistakes do happen. Maybe -- and there

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1 should be a consequence for missing it. But a citation to
2 me is pretty over the top. Maybe something in the middle,
3 you know. A bigger fine or something.

4 CHAIRPERSON ASHFORD: Mr. Hamilton.

5 BOARD MEMBER HAMILTON: Mr. Jolly, my personal view
6 on this is, you know, you're pulling 300 permits a year.
7 Work is good. Good for you. But I worry about a couple
8 of things here. One, we're trying to get L & I to go out
9 there and better enforce the electrical laws. What kind
10 of message do we send them if we say, well, you know,
11 there was clearly -- there was no doubt that the
12 infraction was what it was.

13 MR. JOLLY: There's no doubt.

14 BOARD MEMBER HAMILTON: And I know that the inspector
15 -- if you pull a permit and you don't have everything on
16 there you're supposed to, then they say, "Well, you tried.
17 But you made a little mistake." But not pulling a permit
18 at all is -- they don't know if it was a clerical error on
19 your part or if you just thought, well, we'll just try and
20 get by without that one, which I don't believe that's what
21 you do because it was a new construction; you knew it
22 would be inspected. But are we going to set a precedent
23 where everybody who gets a citation comes in here and
24 says, "Well, it was just a bookkeeping error. We just
25 forgot that one."

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1 MR. JOLLY: Well, again, I just think that maybe
2 there's something in the middle that could be added in the
3 future.

4 And again, you know, if I make a mistake, I have
5 consequences with L & I. If L & I makes a mistake, loses
6 my paper, there's no consequences, you know. Why hold me

7 to a standard that you can't come close to. It's not
8 right, and it's not fair.
9 CHAIRPERSON ASHFORD: Go ahead.
10 BOARD MEMBER (D.S.) BOWMAN: Which one?
11 CHAIRPERSON ASHFORD: David. We'll go in
12 alphabetical order. David A.
13 BOARD MEMBER (D.A.) BOWMAN: Just a comment. One of
14 your statements, Mr. Jolly, was that you're trying to play
15 by the rules and you know there's lots of others out there
16 that aren't.
17 If you've been here for the entire meeting today, you
18 heard Ron say earlier that we have this fraud enforcement
19 team in place, and a lot of what they have found comes
20 from recommendations or information they received from
21 contractors who are tired of competing against people who
22 don't play by the rules. And if that's a serious concern,
23 I would recommend you get in touch with L & I and give
24 them information that could lead them to those guys.
25 Because that's who they really do want to go after.

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1 And I think part of our issue here is time line.
2 This is something that happened almost two years ago. And
3 I think there has been, as Jim mentioned, a little bit of
4 a change in terms of what we're trying to target and do
5 out there right now. And unfortunately we don't see this
6 until two years after the fact.
7 I do have a little bit of an issue with the time line
8 that's being placed on something like this where the
9 inspection takes place on October 26th, the citation is
10 written December 29th but is not delivered or received
11 until February 14th. And that bothers me that that takes
12 place.
13 Other than that I think I would concur with most of
14 everything else that's been said.
15 BOARD MEMBER (D.S.) BOWMAN: Due to the merits of
16 this case, I notice some of the cases over the past six
17 years I've been on this Board the penalty was upheld but
18 the fine was waived. Not totally. Is there a procedure
19 for this?
20 SECRETARY FULLER: That's only happened to my
21 recollection, since I've been Chief since 2000, one time.
22 And I've spoken before on this issue is that we sometimes
23 do do settlements before it ever gets this far, before it
24 ever gets to the ALJ. But once an appeal goes to the ALJ,
25 then I'm not in favor of any kind of settlement or

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1 reduction of penalties. Because we've spent a significant
2 amount of money on it by that time. And that's part of
3 the process.

4 So that's where the Department is at on that. We do
5 not favor settlements after the fact.
6 CHAIRPERSON ASHFORD: Any further comments? Do we
7 have a motion?
8
9 Motion
10
11 BOARD MEMBER (D.A.) BOWMAN: I move that we uphold
12 the findings of the Administrative Law Judge.
13 BOARD MEMBER HAMILTON: Second.
14 CHAIRPERSON ASHFORD: We have a motion and a second
15 to uphold -- affirm the ALJ's decision.
16 Fred, a question?
17 BOARD MEMBER TRICARICO: Yes. I think we need to
18 include in that motion that we affirm the citation and the
19 fine for the citation E48188.
20 BOARD MEMBER (D.A.) BOWMAN: That's acceptable.
21 CHAIRPERSON ASHFORD: And the second?
22 BOARD MEMBER HAMILTON: Second.
23 CHAIRPERSON ASHFORD: Any further comments/questions?
24 All those in favor signify by saying "aye."
25 THE BOARD: Aye.

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1 CHAIRPERSON ASHFORD: Opposed?
2
3 Motion Carried
4
5 CHAIRPERSON ASHFORD: Thank you, Mr. Jolly.
6
7 Item 4.d. Steven Comstock
8
9 CHAIRPERSON ASHFORD: Mr. Comstock.
10 Is everyone ready?
11 Mr. Comstock, would you introduce yourself to the
12 members?
13 MR. COMSTOCK: My name is Steve Comstock. I reside
14 in Moses Lake. I'm a journeyman electrician.
15 ASSISTANT ATTORNEY GENERAL MORTINSON: Just another
16 note, Madam Chairwoman. I would just like to remind the
17 Board that this is an original hearing rather than one
18 that's gone to the Office of Administrative Hearings. So
19 there may be a little more formality with witnesses being
20 sworn in and all. And the Department will be presenting
21 two witnesses: Faith Jeffrey and Karen Carter. And I'm
22 going to ask them to list their own qualifications as they
23 testify.
24 CHAIRPERSON ASHFORD: Thank you.
25 MS. JEFFREY: I'm Faith Jeffrey. I'm the licensing

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1 manager here at Labor and Industries for the electrical
2 program. I manage four small sections, the e-core fraud
3 team, the licensing group, the citations and the audit
4 group.

5 MS. CARTER: My name is Karen Carter. I was a
6 training director for Northwest Washington Electrical JATC
7 for 23 years. Also during that period of time I was a
8 member of the Washington State Apprenticeship and Training
9 Board. And I was a labor representative. In 2004 I was
10 hired by L & I as the technical specialist in
11 apprenticeship by the apprenticeship division. I retired
12 in February of this year and was called back to become the
13 acting program director for apprenticeship.

14 CHAIRPERSON ASHFORD: Now, I understand,
15 Mr. Comstock, you are here with regard to possible
16 suspension of your license.

17 MR. COMSTOCK: Correct.

18 CHAIRPERSON ASHFORD: Before any testimony, we must
19 swear you in.

20 SECRETARY FULLER: Excuse me, Madam Chair. It's a
21 revocation, not a suspension.

22 CHAIRPERSON ASHFORD: Okay. Thank you.

23 I understand, Milton, you do the swearing in.

24 ///

25 ///

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1 (Whereupon, STEVEN COMSTOCK, was duly
sworn by the Notary/court reporter.)

2

3 CHAIRPERSON ASHFORD: Thank you. You may proceed.

4 MR. COMSTOCK: Ladies and gentlemen, I have worked
5 with this Board previously in rule making. And as a
6 result of that, I understand that you're not a panel of
7 judges, but I look at you as a diverse sort of experts in
8 the electric industry. You're appointed because you have
9 expertise. So I believe that with that collective
10 experience there comes a wisdom for good decisions, and I
11 hope that's what we can come to today.

12 I want to address two points in this discussion
13 today. One is specifically regarding my revocation of my
14 journeyman license by the Department, and the second is
15 the process that's used by the Department with regards to
16 these types of matters. So let me address that issue
17 first briefly.

18 My first contact from the Department regarding this
19 matter was a letter to me dated March 22 of 2006 from Ron
20 Fuller stating the Department had made an error and my
21 license would be revoked, period, the end of discussion.
22 He further wanted to say I had 20 days until April 11th to
23 request an appeal before the Board. This letter was

24 received by me about April 8th, so I only had about three
25 days from that point to respond to it.

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1 The error was not a simple error regarding a date or
2 a name. It was with regards to Department's records of my
3 training experience. Ron knows me personally. He has my
4 history available to him. I've worked with him before.
5 And it would seem more appropriate to me to first inform
6 me there was a question about sufficient training and
7 experience to qualify me to take the test, in which case I
8 could provide some specific information or records and
9 demonstrate those things to him. But there was no
10 dialogue regarding that or any kind of a resolution, just
11 strictly the statement that it was going to be revoked.

12 I submitted a formal letter requesting an appeal on
13 April 4th, only to find out that on the 11th hour, which
14 was April 10th, that I had not met the requirements
15 because there was not a \$200 certified check included with
16 my request. There was no mention by the Department in
17 either correspondence regarding this fee or its deadline
18 in order to exercise these rights. I narrowly avoiding
19 losing the chance to just be here today and to appeal this
20 case by just that last day.

21 The Department made and changed no less than one
22 scheduled personal appointment with Ron in Moses Lake, and
23 three phone conferences I was to have with him, were all
24 changed before we even had a chance to talk. I was given
25 no assistance by the Department as to what I could do to

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1 provide them with any more information or any kind of a
2 resolution other than refer to RCW's and WAC's given to me
3 with numbers.

4 I'm here today, of course on my own time -- it's very
5 expensive to be here -- because I haven't been able to
6 maintain a significant dialogue with the Department. So I
7 hope you would look at that matter with regards to these
8 kind of situations.

9 The letter of the revocation to me was a real
10 surprise. I'm now in my 30th year of working
11 professionally in the electric industry. And I'm sure
12 that we can agree that training is essential to gain
13 experience and competency as a journeyman wireman. I
14 think we can also agree that there's no substitute for
15 experience. Both experience and competency are pretty
16 quickly evident when you're working with and around
17 people.

18 Consequently I'm shocked the Department does not
19 think I have sufficient training when I have 30 years of
20 documented, direct, hands-on experience. I've passed

21 three journeyman tests, each on the first attempt, and the
22 most recent one, a 92 percent score.

23 The action the Department's taking to me is like
24 judging my driving ability today with the results of my
25 driver's training test 30 years ago.

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1 Part of the irony of this situation is the Department
2 contends I have not had sufficient training in industrial
3 work. But more than three months ago I was called by name
4 to be a foreman with Aztec Electric to be the first
5 foreman on the job at the Microsoft Columbia Data Center
6 project going on in Quincy. I was picked because of my
7 demonstrated experience and knowledge in the industrial
8 realm with people involved in that project. Currently
9 there are about 60 electricians working on this project,
10 more than 30 of them working for Aztec. And I was
11 recently elevated to general foreman on that project
12 because of my experience.

13 I could go through my work history with you. You've
14 got that information in front of you. So I think at this
15 time all the best I could do is answer any questions you
16 might have.

17 CHAIRPERSON ASHFORD: Ms. Mortinson, your witnesses.

18 ASSISTANT ATTORNEY GENERAL MORTINSON: The Department
19 will first call Faith Jeffrey.

20

21 (Whereupon, FAITH JEFFREY, was duly
22 sworn by the Notary/court reporter.)

22

23 MS. JEFFREY: Madam Chairman, Board members, this
24 is a straightforward case. The question is whether
25 Mr. Comstock was eligible to take the journeyman

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1 electrician exam. If you find that he was not eligible
2 for the exam under the criteria statute, we must revoke
3 his journeyman certificate. The Washington legislature
4 restrained itself and has not gone as far as our
5 neighboring states of Oregon and Idaho requiring mandatory
6 state government apprenticeship program. The legislature
7 did, however, set forth very specific requirements and
8 criteria to be eligible for this exam. I've given you a
9 breakdown of this criteria, and it is one of the handouts.
10 It's the handout with the boxes on it, the little check
11 boxes. I'd like to run through that briefly.

12 At the top of the page, it says RCW 19.28.181. "Any
13 person desiring to be issued a certificate of competency
14 as provided in this chapter shall deliver evidence in the
15 form prescribed by the department affirming said person
16 has met the qualifications required under 19.28.191."

17 The licensing staff uses these check boxes to
18 determine whether somebody's eligible for the exam.
19 19.28.191(f), sub little (i), "Has four years of
20 on-the-job training in the electrical construction trade
21 with a minimum of two years commercial."
22 That's one way of qualifying for the journeyman
23 electrician exam.
24 Another way is the little double (ii).
25 "Apprenticeship program. Successful completion of a

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1 construction electrician apprenticeship training program
2 approved under RCW 49.04," which is the apprenticeship
3 statute.
4 Sub (h) is "Two year trade technical school
5 substitute," which the Department can allow up to two
6 years of a trade school or technical school construction
7 electrician program to qualify towards two years of the
8 required four to be eligible for the journeyman exam.
9 Another option is sub (h) military, which the
10 Department is allowed to evaluate military on a case-by-
11 case basis what experience would apply towards the general
12 electrician exam.
13 There is some additional WAC additions for out-of-
14 country substitute for the reciprocal general journeyman
15 certificate and for credit if you're working for an exempt
16 employer. Those are what we call our plant electricians.
17 Or a good example of an exempt employer would be Boeing
18 Company employees, full-time maintenance employees working
19 on the premises of their employer are exempt from
20 requiring certification and the licensing, but we do have
21 a way for them to certify the hours to qualify for the
22 exam.
23 If you don't meet one of these check boxes, you don't
24 get to sit for the exam. You're not eligible for the exam
25 under the statute. These are the only ways in.

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1 You'll find the definition also at the bottom of the
2 sheet for what is the electrical construction trades.
3 It's in the RCW. It includes but is not limited to
4 installing or maintaining wires and equipment that are
5 used to light, heat, power and installing or maintaining
6 remote control, signaling, power limited or communication
7 circuits or systems. So the licensing staff needs to
8 determine if it's in the electrical construction trade and
9 if it meets one of those check boxes.
10 In this case, there was an error made. And I
11 acknowledge the clerical error that was made. The
12 previous case, he talked about Department error. Well,
13 this is one of them.

14 Management would create bias and unpredictability if
15 the staff dropped their impartiality and made off-the-
16 books decisions because someone was a nice guy or
17 charming. And vice versa, on the other hand, if we
18 unfairly discriminated against someone because they were
19 purely obnoxious and may be pushy or overbearing.
20 We have to maintain and take the appropriate action.
21 This fellow should not have been eligible for the exam.
22 Clerical error was based on a complaint the Department
23 received. It was verified. The licensing staff person
24 made a mistake in certifying his eligibility for the exam.
25 The check boxes are what the licensing staff uses to

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1 make predictable decisions on thousands of applications
2 each year that come through the mail or come through the
3 22 service locations statewide.
4 Mr. Comstock submitted his apprenticeship completion
5 certificate to the Department as eligibility for the exam.
6 Unfortunately the apprenticeship program he completed is
7 the PUD electrical mechanic wireman program, not what we
8 know as box number 2 on that check sheet, the construction
9 electrician apprenticeship program.
10 What the staffer failed to ask when she was reviewing
11 this document that he submitted was, "Which IBEW
12 apprenticeship program did you complete?" And that
13 document in your packet to the Electrical Board, it's in
14 the exhibits that Mr. Comstock did submit to us, and where
15 the error was made, it's page 18 in the exhibits. It's
16 Mr. Comstock's certificate of completion issued by the
17 Washington State Apprenticeship Council. You'll notice
18 that it's the standards of the electrical mechanic. The
19 construction electricians -- another term for them is
20 inside wiremen or 19.28 electricians, the four-year
21 journeymen we're familiar with. That wouldn't say
22 "electrical mechanic." That would say "construction
23 electrician." She erred.
24 These two programs are different in the training and
25 work processes. Graduation from one does not grant you

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1 joint credit in another program. The apprenticeship
2 program and electrical program jointly agree to not give
3 concurrent training credit. At the beginning of the
4 indenture the apprentice selects the training program and
5 matriculates through that program only. He does not
6 receive partial credit for tasks that he may learn that
7 apply to multiple trades such as job-site safety;
8 blueprint reading; basic electrical circuitry; first aid;
9 or in the construction electrician program, welding. We
10 don't give them a construction electrician certificate and

11 a welding certificate even though they learned welding.
12 He does not get the joint credit.
13 I have with me the apprenticeship program manager,
14 Karen Carter, who can address -- she has found
15 Mr. Comstock's apprenticeship program standards from 1984
16 when he graduated and can describe the work processes and
17 tasks in the program that he did graduate from.
18 The Department feels so strongly that there's a
19 difference between the two apprenticeship programs that a
20 chief was removed 11 years ago as our chief electrical
21 inspector. At that time the chief electrical inspector
22 had been hired from PG & E, Pacific Gas and Electric, in
23 California. His interviews and references were
24 impressive. He beat a field of qualified candidates.
25 After he was hired and had moved his family up here, there

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1 was a complaint filed he was not qualified. He did not
2 have a general journeyman certificate. They were right.
3 After four months of struggle of trying to qualify his
4 experience from the utility program, it was determined the
5 experience did not count; he was not eligible to take our
6 journeyman exam after the fact and was removed as chief.
7 The statute sets forth requirements to obtain this
8 certificate. Mr. Comstock at this time does not meet
9 those statutory requirements. He did not satisfy criteria
10 number 2. His completion certificate was not eligible
11 towards what we know as the construction electrician
12 journeyman exam.
13 Mr. Comstock offered a letter, a resume and time line
14 of his past experience after he received the letter. And
15 I've laid out that time line in this color-coded graph.
16 We believe that there are enough discrepancies in the
17 documents that he supplied that I need additional time to
18 try and verify and work with Mr. Comstock the
19 discrepancies in this time line.
20 He provided Social Security Administration records,
21 his 1984 work experience records to date. And that was
22 circa 1984, which should be more reliable than memory
23 today, you would think 30 years later -- 20 years later.
24 And he supplied his resume. They're color coded. They
25 should line up, but they don't at this point. The time

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1 line in front of you has enough discrepancies to warrant
2 us being careful to rely on memory and to -- I feel they
3 need to interview additional subjects.
4 He's mentioned a journeyman -- he mentioned several
5 journeymen in his resume. I found one. The other two
6 that he mentioned from U & I Sugar are noncertified
7 journeyman electricians. Sunny Smith is. I have a letter

8 and contacts out to Sunny Smith.
9 He also mentioned the Odessa Company irrigation
10 experience. That was working for his father, Wilford D.
11 Comstock. I have letters out to both of his addresses in
12 Odessa and Junction -- Apache Junction, Arizona -- some
13 Junction, Arizona to contact me so that we can get some
14 information on what he did working for his dad.
15 Odessa Pump and Irrigation was never an electrical
16 contractor. They were a construction contractor in the
17 70's. In 1975 we -- there were specialty electrical
18 contractors. In 1976 we brought in the pump and
19 irrigation electrical contractor specialty. So why Odessa
20 in '79 and '80 was still a construction contractor and not
21 a specialty pump and irrigation electrical contractor is a
22 mystery. But it's another one of those discrepancies that
23 I want to talk to some people and clear up.
24 18 months ago the Board faced this same situation
25 exactly. I was here on a journeyman revocation for a

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1 certificate where the individual, he had taken and passed
2 the exam, but it was determined on a complaint filed by
3 the State of Oregon to us that he was not eligible for
4 that exam. Some of you that were here at this time will
5 remember that was Marvin Reichelt. The Board went through
6 with the revocation and required Mr. Reichelt to work with
7 me to try and qualify his former years of experience that
8 he was now bringing forward.

9 I'm asking you to revoke this certificate and remand
10 Mr. Comstock to properly work with me to document his
11 potentially supervised work experience hours for these
12 companies that are on his resume.

13 MR. COMSTOCK: May I address some of those issues or
14 should I wait?

15 ASSISTANT ATTORNEY GENERAL MORTINSON: Madam Chair, I
16 think it would be more proper for the Department to finish
17 its witnesses, its case, and then Mr. Comstock is free.
18 Unless Donna has other advice to the Board.

19 ASSISTANT ATTORNEY GENERAL EMMINGHAM: It's probably
20 more appropriate for Mr. Comstock to respond in rebuttal
21 after the Department's completed presentation of its
22 witnesses.

23 CHAIRPERSON ASHFORD: Your next witness.

24 ///

25 ///

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1 (Whereupon, KAREN CARTER, was duly
2 sworn by the Notary/court reporter.)

3 MS. CARTER: In 1981 Mr. Comstock registered with the

4 Grant County PUD Number 2 as an electrical mechanic
5 wireman. And you have this document I think in your
6 packet. It looks like this (indicating). It's
7 Apprenticeship Registration and Tracking System.
8 Apprenticeship information or info view.
9 He graduated from that program or completed that
10 program on 8/16/1984 as an electrical mechanic wireman.
11 The Department would have sent him or given him a
12 certificate of completion which -- and his certificate of
13 completion stated mechanical -- journeyman -- let's see --
14 "electrical mechanic." If it had been in the construction
15 industry or for the inside program, it would have said
16 "construction electrician."
17 From the Grant County PUD Number 2 standards in 1984
18 -- October 19, 1984, they have the work processes here.
19 And I think you have a copy of that too. It says Grant
20 County Utility District Number 2, Apprenticeship
21 Committee, work processes, B, electrical mechanic wireman.
22 There is 1 through 12 different steps or different
23 educational pieces that he has to complete or attempt to
24 complete during that 8,000-hour period. And then also I'm
25 hoping that you have a copy of the Northwest Washington

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1 Electrical Industry, Joint Apprenticeship and Training
2 Committee work processes for the construction electrician.
3 The work processes -- some of the things that he
4 would have possibly done as a mechanic wireman probably
5 would be transferable to the construction electrician
6 program. But he doesn't -- but the work processes for the
7 electrical mechanic doesn't include some of the commercial
8 and industrial program that he would have to have
9 instruction -- which he would have to have instruction.
10 So they aren't really comparable.
11 And I guess that ends my testimony.
12 CHAIRPERSON ASHFORD: Thank you.
13 Mr. Comstock.
14 MR. COMSTOCK: If you're looking off of page 18 that
15 referenced my certificate of completion, I understand that
16 they did not identify what union it was through. You'll
17 notice the handwritten note below that, it says very
18 clearly it was with IBEW Local 77. So that was a mistaken
19 statement on their part.
20 I was also never informed by anyone in the Department
21 to contact either of these ladies, anyone in the
22 Department, regarding what kind of credentials I could
23 provide, resumes, documentation, any other kind of
24 information to help perform -- or provide evidence of my
25 work experience. I've asked for information on what they

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1 do need to have and not given any guidance with regard to
2 that. I could provide plenty of documentation from
3 journeymen, from apprenticeship schools, and different
4 places, contractors I've worked with and for to evidence
5 the kind of work I've done over the last 26 years in this
6 industry. Like I said earlier on, I got no cooperation
7 from the Department as to how to resolve or meet the
8 requirements or provide what was needed to accomplish
9 this.

10 I guess that's all I have to say with regard to that.

11 CHAIRPERSON ASHFORD: So since your March 22nd letter
12 from the Department, you have really no direct
13 communication? Is that what I'm understanding?

14 MR. COMSTOCK: I had one discussion with Ron on the
15 phone after the fourth attempt that said -- that
16 referenced this RCW and this WAC; that's what you need to
17 do. That was all the guidance I got.

18 CHAIRPERSON ASHFORD: Ms. Mortinson.

19 ASSISTANT ATTORNEY GENERAL MORTINSON: In rebuttal,
20 the Department would like to call Mr. Fuller to answer the
21 issue brought up by Mr. Comstock about no guidance from
22 the Department. So at this time the Department would like
23 to call in rebuttal Ron Fuller.

24 ///

25 ///

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1 (Whereupon, RONALD FULLER, was duly
2 sworn by the Notary/court reporter.)

3 ASSISTANT ATTORNEY GENERAL MORTINSON: And please,
4 Mr. Fuller, please tell the Board what contact and what
5 information you've given Mr. Comstock.

6 SECRETARY FULLER: Ron Fuller, Chief Electrical
7 Inspector.

8 I've had several -- two or three conversations with
9 Mr. Comstock over the phone. This is the first time we've
10 met face to face on this issue. But we did have a meeting
11 scheduled in Moses Lake. The timing didn't work out for
12 him on that one actually. And we had scheduling conflicts
13 on a couple of others.

14 But we have talked about the issue about what does he
15 have to provide the Department to show that he was
16 qualified to test for the journeyman exam.

17 I think I've been very clear with him that it's up to
18 him to provide the documentation to us, and that his hours
19 need to either show that he attended an appropriate
20 apprenticeship program or he worked in Washington under a
21 trainee certificate with appropriate supervision or he
22 shows out-of-state experience appropriate to that state.
23 So to say that we haven't told him what he needs is not

24 accurate. It's up to him to get the documentation to us.
25 It's not up to us to tell him that he needs a letter from,

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1 for instance, Odessa Pump and Irrigation. That's up to
2 him to get that documentation from him for us.
3 So I want to just be clear that we have tried to
4 direct him down the right road on this one and I think
5 bent over backwards.

6 We -- you know, our clerical person definitely made a
7 mistake on this one. And we can't ignore it. The
8 statute's very clear on this one is that if they don't
9 qualify, they don't qualify. And we have no options after
10 the fact that we find an error like this but to ask for
11 revocation.

12 MR. COMSTOCK: Well, I'd like to disagree with the
13 emphasis that Mr. Fuller put on how hard they tried to
14 work with me. Like I said, we had one phone conversation
15 regarding I did need to get a check in in order to
16 maintain my appeal and no discussion about what else
17 needed to be provided at that time. It was strictly only
18 providing a check. The only other conversation we had was
19 on the phone when he said refer to this RWC and this WAC.
20 Obviously I provided Social Security information, which
21 you had to send away for and get. I provided -- the
22 information was available to me.

23 I can see there may be some discrepancies on time
24 lines. When I first submitted these documents, a lot of
25 this was from memory from 25, 28 years ago. Since then

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1 I've gotten more documents to tighten up those time lines.
2 But all the facts as far as companies I've worked for and
3 the work I've done is factual.

4 CHAIRPERSON ASHFORD: Have you submitted these
5 additional documents to the Department yet?

6 MR. COMSTOCK: The official documents referred to
7 for --

8 CHAIRPERSON ASHFORD: No, the additional documents.

9 MR. COMSTOCK: I was never asked for any additional
10 documents. That's the information I was trying to get is
11 what do I need to provide you, what kind of a statement,
12 what kind of a form, what kind of a document. I got no
13 response to that. I was given nothing except, "You need
14 to convince the Department that you're eligible to take
15 this test."

16 CHAIRPERSON ASHFORD: Mr. Simmons.

17 BOARD MEMBER SIMMONS: You got your -- if I'm reading
18 the documentation correct, you got your journeyman card on
19 November of 2005; is that correct?

20 MR. COMSTOCK: The state license, yes.

21 BOARD MEMBER SIMMONS: Okay.
22 And I think we need to really concentrate here and
23 narrow it down. We're really here to confirm or to find
24 out, Mr. Comstock, what -- whether or not you have the
25 documented hours to be able to have taken the test and

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1 passed it at that time. And going back to the list that
2 Faith told us about, simply can you prove that you can fit
3 one of those boxes?

4 MR. COMSTOCK: I certainly can.

5 In fact, I know that Sunny Smith -- a name that was
6 mentioned earlier -- had contacted me last week and said
7 he got a notice from L & I asking for a questionnaire,
8 asking for information, and asked me what it was about. I
9 explained it to him. And he said he would be glad to fill
10 it out and send it in. If it hasn't been received yet, it
11 will be. But that was just last Saturday I talked to him.

12 My father's documentation, I see him every day. He
13 lives in Ephrata. I don't know why they're sending it to
14 Odessa or Apache Junction. But certainly he can fill out
15 that documentation.

16 Other people I've worked with on this job with
17 Microsoft right now I've worked with recently in
18 industrial and commercial applications, and they can all
19 provide that kind of information.

20 I have a litany of people I can get referrals from.
21 I just need to know what the Department wants.

22 BOARD MEMBER SIMMONS: Well, I think that's part of
23 the problem is that it's your responsibility to properly
24 document the hours that you have. It's not their
25 responsibility to figure out that you have the hours.

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1 And there's some very clear distinctions on the
2 apprenticeship process. And it looks to me -- and I am
3 impressed by your resume. You have tons of experience as
4 far as a wireman of different sorts. But I cannot find in
5 your documentation where I see that you have had 8,000
6 hours under a construction electrician documented as an
7 apprentice, and that's what you have to have.

8 And the training program you went through, the
9 apprenticeship you went through, is not an inside wireman
10 apprenticeship. And that's the card that you have and the
11 card you're trying to protect at this point. And that's
12 the problem. It's not that you aren't qualified as -- I
13 believe your qualifications. The problem is State law
14 says you have to document and prove that you've had this
15 amount of training, and that's where the problem comes in
16 because it doesn't fall under your inside wireman
17 training. It's just not there. That's the simple

18 problem. And I can't see where you can certify that.
19 BOARD MEMBER PREZEAU: I just would like to -- and I
20 agree with what Jim said to a point. Because certainly I
21 think Mr. Comstock felt that when he submitted his
22 documentation that displayed that he completed the
23 electrical mechanic program and that was accepted by the
24 Department, it is reasonable to assume that he assumed he
25 had provided the necessary documentation. They allowed

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1 him to sit for the test. He passed the test. Boom, now
2 he has an EL-01 card, and has since November of 2005. And
3 I think it's reasonable to assume that if that would have
4 happened to me, I would have thought that I had sustained
5 the burden of proof and the Department accepted my burden
6 of proof, and that you go down the road and you continue
7 to work as an electrician.

8 And so at this point I think it's troubling because
9 certainly -- and I agree with Jim that Mr. Comstock has a
10 tremendous amount of experience in the industry.

11 The problem is -- and in my interpretation of his
12 experience, to be quite honest, I have a tendency to agree
13 with the Department. However, you know, the Department
14 has made a mistake, and now we're in this sort of quagmire
15 as to what exactly do we do going forward. And one of my
16 concerns is, well, you know what, obviously we're going to
17 have to move forward.

18 So if -- and I have a question for Ms. Jeffrey, and
19 that is: If Mr. Comstock's license is revoked, the time
20 that he worked as a journeyman since 11/2005, it would be
21 reasonable to assume that he would not have to have a
22 training certificate since he had an EL-01 card issued I
23 understand erroneously -- or as the Department feels
24 erroneously -- would any of the hours that he worked from
25 gaining that EL-01 certificate to the present day count

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1 towards achieving a general journeyman's license going
2 forward?

3 MS. JEFFREY: I can address that by how we worked it
4 in the past with Marvin Reichelt where we revoked his
5 certificate, and then he and I went back in time, and I
6 conducted the interviews and sent out the questionnaires.
7 I called the people and talked to them.

8 We make an extraordinarily reasonable effort to try
9 and document their hours.

10 There is -- there would be no reason to discount what
11 he's done since he obtained the exam. I agree with you;
12 it would be ridiculous to have a journeyman card and a
13 trainee card.

14 If we can get eye-witness statements, interviews --

15 I'm really good at conducting interviews with these
16 journeymen of what he's done.
17 One of the issues, though, is that as an installer,
18 was he the foreman, the supervisor, or was he the
19 installer? I need installer hours. So that's where it
20 would stop. I know he's a foreman now.
21 There is no State law that says you have to have a
22 journeyman certificate to be a foreman. So his work, his
23 income is not at threat.
24 I can explain it by if I held a trainee card,
25 somebody could hire me as a foreman. They'd be out of

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1 their mind, but they could do it. There's no State law
2 that says a foreman has to carry a general journeyman
3 certificate. But I can't give installer hours for
4 supervision for foremen, which is part of the resume time
5 that I need to ferret out is when he was the manager.
6 Now, that doesn't count. But I can go back in time for
7 when he was installing and when he was properly -- when he
8 was supervised by a journeyman electrician, and I'm
9 extraordinarily fair with that.
10 Marvin Reichelt did not obtain his commercial hours.
11 He obtained a residential certificate. He passed the
12 residential administrator exam, and he now has his own
13 company in Longview as a residential electrical
14 contractor.
15 I can assure you that I'm fair and I'm reasonable in
16 trying to backtrack on these hours, but I can't ignore
17 this error.
18 MR. COMSTOCK: I'd like to add too, I did provide
19 four names of electrical administrators who I have either
20 worked with, for or in conjunction with on that resume
21 also. I don't know if they've been contacted or not. I
22 have not contacted them directly. But I did provide those
23 references.
24 CHAIRPERSON ASHFORD: Provided references, but did
25 you provide any documentation of the hours that you

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1 worked?
2 MR. COMSTOCK: I did not provide the documentation
3 other than a summary of the interaction that I had with
4 those people and their names.
5 BOARD MEMBER GOUGH: Isn't it a basic requirement to
6 have to have experience that has actually been certified,
7 documents that have been notarized that the Department can
8 look at that you have validation of your experience that
9 is a certified document? To provide them with a list of
10 references or a resume, to me it puts them in a very
11 difficult position if that affidavit of experience is not

12 notarized and is, in fact, an official document.

13 CHAIRPERSON ASHFORD: Mr. Fuller.

14 SECRETARY FULLER: In response to what Faith -- the
15 question that Tracy asked Faith and to Dave's comment
16 there is that what the issue here is about hours is prior
17 to his first being approved and tested.

18 He has not shown us any documented hours that we can
19 accept prior to that approval.

20 In response to Tracy's question, since then he had a
21 journeyman certificate. And what Faith's comment back was
22 I believe is that we could look at the hours that he's
23 gained since he got the journeyman certificate erroneously
24 as a trainee if he can show us that he was on a job site
25 doing work, electrical work that we recognize with another

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1 journeyman. So I think at this point revocation is the
2 only option the Board has like the Department.

3 I think Mr. Comstock's options at this point are to
4 go back to the people he's worked with since he got the
5 journeyman certificate and document through affidavits of
6 experience that he actually performed work with another
7 journeyman on the site with him, and then we will be able
8 to give him credit for those hours. But he obviously did
9 not -- he's really not close to the 8,000 hour minimum.
10 So he's got a substantial way to go yet in that regard to
11 be qualified. Because his apprenticeship program is not
12 what we recognize, and he had no documented
13 trainee-approved hours prior to being approved for the
14 exam the first time.

15 MR. COMSTOCK: One letter I received from the
16 Department from Mr. Fuller said that I was only missing
17 2,000 hours of commercial and industrial -- and/or
18 industrial experience to qualify.

19 I have worked several years under journeymen and with
20 journeymen in my younger years as a journeyman with a
21 utility company as a wireman doing maintenance in both
22 commercial and industrial environments. So it would seem
23 to me that those would also be qualifying hours, which I
24 could provide with notarized documents from those
25 individuals.

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1 CHAIRPERSON ASHFORD: Well, yes, we have your resume,
2 but I'll go back to a question asked earlier: You have
3 not provided any documents of hours.

4 BOARD MEMBER HAMILTON: Madam Chairman, if he
5 provides the documented hours, does he have to take the
6 test over again? We made a mistake. We allowed him to
7 take the test without the documented hours first. But he
8 did take the test, and he passed it with flying colors.

9 So could that not be waived if he did supply the document
10 to support being eligible for the test?
11 SECRETARY FULLER: I would commit to that if the
12 hours could be documented and justified before we're out
13 of this code cycle that we would accept his test as is.
14 But if it's not -- if he can't do that before we adopt the
15 next code revision, then I would say he needs to retest at
16 that point.
17 BOARD MEMBER SIMMONS: That's pretty fair.
18 CHAIRPERSON ASHFORD: Anyone on the Board -- oh.
19 ASSISTANT ATTORNEY GENERAL MORTINSON: Closing
20 statements, Madam Chairwoman? I don't know if
21 Mr. Comstock has one.
22 CHAIRPERSON ASHFORD: Do you have a closing
23 statement, sir?
24 MR. COMSTOCK: Well, I just -- like I offered, I'd
25 like to entertain any questions you might have. Because I

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1 did provide information that I was hoping would be either
2 sufficient or at least get a response from the Department
3 as to what I was lacking and did need to provide. There's
4 no intention to hide anything. I'm trying to provide
5 whatever is necessary; I just don't know what that is.
6 I will have no problem documenting, I believe,
7 documenting hours that I have worked in the specified
8 requirement areas. I just ask that the Board look at the
9 situation here and provide me the opportunity to do that
10 because the experience is there.
11 ASSISTANT ATTORNEY GENERAL MORTINSON: Yes, thank
12 you.
13 There was an error made. I think that's been clear.
14 I think the legislature probably anticipated this would
15 happen, and that is why there is a provision in the law --
16 19.28.241 -- that allows a certificate issued through
17 error to be revoked. That's what happened in this case.
18 And although it is Mr. Comstock's responsibility to
19 provide the Department with the hours, it is not the
20 Department's responsibility.
21 As Ms. Jeffrey has testified, the Department is
22 willing to do some of the work with him and for him to
23 document the hours, I'm sure based in part that it was our
24 error. However, from the evidence before you, it is clear
25 he was not qualified to take the exam. And because he was

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1 not qualified to take the exam, he had a certificate
2 issued in error. Because you don't get a certificate
3 unless you pass the journeyman exam.
4 So the Department would request that this Board
5 revoke Mr. Comstock's journeyman certificate, and as

6 Ms. Jeffrey requested, remand the matter to the Department
7 so the Department can continue its investigation of
8 Mr. Comstock's hours to see what hours he can get credit
9 for.

10 I think the Department would also encourage
11 Mr. Comstock to provide the documentation and work with
12 them in this endeavor. However, the Department is willing
13 to do the investigation, the talking to the people and
14 helping him get the documents that will give him credit
15 for any hours he may be eligible for for a journeyman
16 certificate.

17 CHAIRPERSON ASHFORD: Thank you.

18 Fred.

19 BOARD MEMBER TRICARICO: Madam Chair, one more
20 question of the Department please and a clarification.

21 The hours that he worked as a -- with the PUD on
22 industrial and commercial work, can that qualify for the
23 01 card?

24 ASSISTANT ATTORNEY GENERAL MORTINSON: I think I
25 would either like to have Ms. Carter or Mr. Fuller answer

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1 that question.

2 SECRETARY FULLER: It will not qualify. And the
3 reason being with the utility is because it's not
4 electrical construction work as we've defined it for
5 19.28.

6 The other difficulty that Mr. Comstock is going to
7 have is any hours that he's trying to document prior to
8 this inappropriate approval must have been performed as an
9 electrical trainee. Just because he had experience,
10 whether it be legal or illegal -- it has to be legal. We
11 cannot take the illegal experience. So if he can document
12 10,000 hours working for an owner like a Boeing or a
13 someone like that, but if he didn't have the trainee card,
14 we are not going to be able to give him hours for that
15 credit. The trainee card is -- it's mandatory.

16 MR. COMSTOCK: I worked two years after I achieved my
17 journeyman certificate with the PUD in buildings and
18 maintenance. During that time the work I was doing was
19 not utility substation line type of work; it was building
20 -- commercial building, maintenance, construction and
21 repairs on the facilities of the PUD. So although I
22 understand the trainee card issue, the work was not just
23 electrical utility work; it was what would be considered a
24 general wireman's type of work.

25 CHAIRPERSON ASHFORD: Mr. Simmons.

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1 BOARD MEMBER SIMMONS: Yeah, the only problem,
2 though, Mr. Comstock, is that even if you did that work,

3 if you weren't -- didn't have a trainee card and weren't
4 working under the supervision of a journeyman electrician,
5 no matter how wonderful of a job you did -- and none of us
6 are questioning that you don't have the capability to do
7 it -- unfortunately those hours still don't count. And
8 that's what Mr. Fuller's getting at.

9 MR. COMSTOCK: And a lot of that work was done with
10 individuals who had at that time state journeyman license
11 certificates, which I can provide a list of the names.

12 However, the trainee card, no, I wasn't. Because I
13 was working under the staffs of a journeyman through the
14 union.

15 BOARD MEMBER SIMMONS: Well, if you can provide those
16 documented hours as Mr. Fuller said, I think the State is
17 being extremely generous in allowing you the latitude to
18 put your hours together here and get your card back
19 without having to take the test again.

20

21 Motion

22

23 BOARD MEMBER SIMMONS: And I want to make a motion
24 now that we vote on this issue. My motion would be to
25 revoke your journeyman certificate, your 01 license at

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1 this point in time, and to work with the State to certify
2 your hours.

3 BOARD MEMBER: I would second the motion.

4 CHAIRPERSON ASHFORD: We have a motion and a second
5 to revoke Mr. Comstock's EL-01 license, to have him work
6 with the State to verify hours.

7 Any further questions? All those in favor?

8 THE BOARD: Aye.

9 CHAIRPERSON ASHFORD: Opposed? Motion carried.

10

11 Motion Carried

12

13 ASSISTANT ATTORNEY GENERAL MORTINSON: Madam Chair,
14 let me -- I'd like just a minute to confer with
15 Ms. Emmingham. I do believe I have an order to sign --
16 for you to sign that she has reviewed. But I want to ask
17 about one addition.

18 CHAIRPERSON ASHFORD: Okay.

19 Our next agenda item is the IBEW Local 46 utility
20 exemption.

21 I have six names that have signed up to speak on this
22 issue. Are there any others that were going to speak?

23 It's five minutes after 12:00. Do we want to break for
24 lunch or continue?

25 ///

1 Item 5. Presentation of Final Orders

2

3 ASSISTANT ATTORNEY GENERAL MCGILL: Madam, Chair,
4 there are final orders to present.

5 CHAIRPERSON ASHFORD: Are they ready?

6 ASSISTANT ATTORNEY GENERAL MCGILL: I believe they
7 are ready. That might be nice to go first, if you would
8 allow.

9 CHAIRPERSON ASHFORD: We'll do the final orders.
10 Give some thought to continuing.

11 ASSISTANT ATTORNEY GENERAL HAWK: Madam Chair,
12 members of the Board, James Hawk, assistant attorney
13 general representing the Department.

14 And succinctly these are final orders related to the
15 April hearing. After a robust discussion, a decision was
16 made to affirm Administrative Law Judge conclusion that
17 dismissed these citations. Of course, the appellant was
18 represented by Mr. Bishop at the time. These are the
19 Techna Systems, Inc. and Larry Bishop cases. The agency
20 had not prepared a final order or final orders at the time
21 anticipating a different result. But here we have final
22 orders for signature, and this will bring finality to
23 these. Ms. Emmingham I believe has seen the content. And
24 the Department presents these anticipating no appeal. The
25 appellant has prevailed and therefore need not be present.

1 The Department will serve -- and because the appellants
2 were pro se and not represented by attorneys, the
3 Department has made this consideration and will bring this
4 to finality with your assistance.

5 CHAIRPERSON ASHFORD: Okay. As you see, every issue
6 we've had this morning has taken a considerable amount of
7 time. Do you have any idea how long your presentation
8 will be on the next item?

9 UNIDENTIFIED: I can speak for mine, Madam Chair,
10 that it will be short and to the point. I want to just
11 explain our position set out in the brief. I'm not going
12 to go beyond that. I'll go through Mr. Fuller's letter
13 and state where we agree and state where we disagree.

14 CHAIRPERSON ASHFORD: Consensus of the Board. Do you
15 want to proceed or break for lunch?

16 BOARD MEMBER TRICARICO: Madam Chair, in my opinion,
17 besides the IBEW we still have the WAC to do and several
18 other items on the agenda. I believe we're going to be
19 here for many more hours today. So I think it would
20 probably be an appropriate time for us to break and have
21 at least a quick lunch.

22 BOARD MEMBER: I second that.

23 CHAIRPERSON ASHFORD: How much time do you want? 30

24 minutes?

25 SECRETARY FULLER: If your intent is to go upstairs,

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1 this is five minutes after 12:00 and the rush is on
2 fifteen minutes ago. I would suggest that you give
3 everyone at least 45 minutes, if not, the full hour.

4 (Various discussion amongst
the Board.)

5

6 CHAIRPERSON ASHFORD: So what do we want to do? Do
7 we want to continue until -- break for lunch at 12:30 when
8 the rush may be over?

9 BOARD MEMBER TRICARICO: Madam Chair, if we do, I'd
10 recommend that we skip to some of the other items that
11 maybe we can knock out in that 20 or 30 minute time.

12 SECRETARY FULLER: Madam Chair, if we're going to
13 continue on, I'd suggest that we continue on until about
14 1:00 and then go. Because then the staff will be done
15 pretty much with their lunches by then. And I can fill in
16 with, say, the budget and the operating and maybe get
17 through the JLARC report even in that period of time.
18 That would be my suggestion.

19 CHAIRPERSON ASHFORD: So do you want to proceed?

20 MR. CARY: We'd like to proceed, Madam Chairman.

21

22 Item 4c. IBEW Local #46 - Electrical Utility Exemptions

23

24 BOARD MEMBER PREZEAU: Madam Chair, I would like to
25 make a point of personal privilege and make a statement

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1 before we begin this hearing.

2 There was questions raised, both in the appeal packet
3 and in some internal discussion, about potential conflict
4 of interest. And I would like to go on record as stating
5 that I believe I have no conflict of interest.

6 It was noted -- and I believe it's John Cary's -- is
7 that his name -- John Cary's statement that it is his
8 contention that there's at least eight members of this
9 Board that potentially suffer a conflict of interest in
10 hearing this case.

11 I think that if you -- one of the things that he
12 brings as evidence is the fact that there are -- those
13 eight members are either electricians or electrical
14 contractor representatives. I think if you follow that
15 line of reasoning, then we would always have a conflict of
16 interest in any appeal that you would hear. Certainly it
17 could be argued that in the previous cases that we've
18 heard having to do with licensing requirements -- I have
19 an EL-01 license and hold it in the highest integrity, and

20 so therefore am I biased because I want to hold others to
21 that high integrity? I don't personally believe so. I
22 also don't personally believe that because Board Member
23 Jim Simmons is an electrical contractor, and there's been
24 several occasions where electrical contractors have been
25 cited, have made appeals before this Board, that because

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1 potentially the electrical contracting firm that he owns
2 and operates may or may not be in direct competition with
3 some of those electrical contractors that have been in
4 front of us, I do not believe that he Board Member Simmons
5 represents a conflict of interest in those cases.

6 And I just wanted to state that for the record that
7 just because I am an electrician and I also am a member of
8 IBEW Local 76, not Local 46, that I would have a conflict
9 of interest in this case. I have heard no testimony or no
10 arguments in this matter prior to receiving the Board
11 packet. And I just want to state for the record since I
12 felt that my integrity was being called into question that
13 I feel that I have absolutely no conflict of interest.

14 Thank you.

15 CHAIRPERSON ASHFORD: Thank you, Tracy.

16 Anybody else wanting to make any comments?

17 MR. CARY: Madam Chair, I'm John Cary. And if I
18 could make just one short statement. And my statement is
19 I did not mean to impune the integrity of any member of
20 this Board.

21 I fully recognize as a board member myself that
22 there's -- and the point that I'm making is that a) in a
23 sense there is a conflict set up by the statute itself.
24 This is not at all personal to any member of the Board, no
25 reflection on any member of the Board's integrity.

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1 This is a very important case. I simply want to
2 preserve for the record this objection. And so I hope
3 that the Board understands that the point is made in that
4 regard. I do want to preserve that point for the record
5 in case this goes further. The justification, the
6 explanation is spelled out in more detail in my paper, and
7 I won't take the time now to take your time with that.

8 CHAIRPERSON ASHFORD: Mr. Simmons.

9 BOARD MEMBER SIMMONS: I want to -- since Tracy
10 brought up this issue, I want to clarify and say that I
11 believe that every member on this Board is objective and
12 carries no agenda. I see every time that we have met and
13 that we have issues that the members of this Board do not
14 carry an agenda nor try to forward a personal agenda. I
15 believe that they're here doing their job for the public
16 and for the state of Washington, and that is their agenda.

17 And I want to put that on the record. Thank you.
18 CHAIRPERSON ASHFORD: This is an usual item brought
19 before the State Electrical Board. And in all honesty, I
20 am not quite sure how to proceed with this. I have asked
21 Donna, our counsel, to sit behind me and advise me of
22 doing something I shouldn't be doing.
23 Mr. Fuller.
24 SECRETARY FULLER: Madam Chair, the Department --
25 actually we need to -- we'd like to have a clarification

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1 from the IBEW first of all on whether they consider this
2 an appeal or whether they consider this advice. Because
3 that's key for us in how we proceed and what we ask the
4 Board for. They have submitted an appeal deposit. So
5 that makes it an appeal. But in their documents, they
6 call it advice. So I'd just like for them to be on the
7 record as to what process we're really in here first of
8 all.
9 CHAIRPERSON ASHFORD: The first question I have to
10 ask -- and that would go back to something that we just
11 did in the previous case. Do we need to swear anyone in?
12 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Well, Madam
13 Chair, that would depend on whether or not this is an
14 appeal or whether or not the parties are asking for advice
15 from the Board. If this is a formal appeal, we probably
16 need --
17 MR. CARY: Madam Chair, this is seeking an advisory
18 opinion probably.
19 CHAIRPERSON ASHFORD: An advisory opinion.
20 UNIDENTIFIED: So we want our \$200 check back.
21 SECRETARY FULLER: And that's exactly what we'll do
22 is refund the \$200 first of all.
23 The Department actually even though this is advice,
24 we still believe that the Board is going to take some
25 action on this in that advice, whatever it may be. And we

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1 -- I agree with Jim in a lot of ways with what he said
2 about conflict, and the other statements also with Tracy.
3 We do have a problem, though, that we feel needs to
4 be addressed. And we feel that you, Madam Chair, because
5 you're president of the NECA that's involved here as an
6 appellant, we feel that Jeff, because he's a member of the
7 board of NECA, and we feel that Virgil because he's a
8 full-time employee of IBEW 46 that the three of you should
9 recuse yourselves. Your stepping aside will not get you
10 into a situation as a Board where you don't have enough
11 people to make a decision and to vote. But we feel that
12 the three of you in particular have too close a ties with
13 the appellants.

14 MR. STERNAL: Madam Chair, my name is guy Sternal.
15 I'm with the firm of Eisenhower and Carlson. I haven't
16 identified myself for the Board. Thank you for allowing
17 us to appear today, members of the Board. We look forward
18 to addressing this issue with you.
19 I'll respond to Mr. Fuller after I introduce my
20 client, Steve Washburn, who's the executive director of
21 the NECA chapter that I represent. And with me is Dick
22 Roblee who represents the local union. Both of us are
23 appealing -- or seeking an advisory opinion on these same
24 issues, just to clarify who we are and why we're here.
25 I would respond to Mr. Fuller's -- I don't know what

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1 Mr. Fuller is doing, if he's objecting or making a motion
2 for recusal. I don't think it's an appropriate motion for
3 this Board to entertain. I think the Board has to decide
4 for itself -- evidently you all have -- that you're
5 unbiased and qualified to sit.

6 CHAIRPERSON ASHFORD: Well, I'll speak on my own
7 behalf as far as myself. I feel as a member of this
8 Electrical Board, it's my responsibility to listen to all
9 issues that relate to the electrical industry. And once
10 all the testimony is taken, then to make my own decision.

11 I can't speak for Mr. Newman or Mr. Hamilton. But I
12 feel that is my position on the Electrical Board is to
13 listen to all issues that come before it.

14 MR. WASHBURN: Chairman Ashford, my name is Steve
15 Washburn, executive director of the National Electrical
16 Contractors Association, the Puget Sound chapter.

17 I'm a little taken back by Mr. Fuller's comments for
18 the simple fact that this has nothing to do with the NECA,
19 this has nothing to do with the IBEW. This is strictly an
20 electrical industry issue, period.

21 BOARD MEMBER HAMILTON: Madam Chairman, one of the
22 reasons that I got appointed to this position is because I
23 represent the largest electrical in the state. And
24 previous to that, I represented the farthest away
25 electrical in the state in Spokane.

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1 So, you know, this is not a job -- the basis of this
2 project that brought this all forward, it's not a job that
3 I'm going to work on in any way, shape or form. But, you
4 know, to try and say that we can't sit here and discuss
5 this issue and come up with a reasonable answer to things
6 because we're too involved with it, I mean, that's why
7 we're here. That's why they picked us. So I do not feel
8 that I have any problem with being completely impartial to
9 what goes on here today.

10 CHAIRPERSON ASHFORD: Mr. Newman.

11 BOARD MEMBER NEWMAN: I feel the same way. I'm
12 representing a telecom contractor, and this isn't going to
13 affect anything I do in my business dealings too much.
14 I feel that as a member of this Board, our job is to
15 maintain objectivity and listen to both sides before we
16 make any kind of decisions.
17 CHAIRPERSON ASHFORD: Shall we proceed?
18 BOARD MEMBER SIMMONS: Maybe I can just make one
19 quick point to maybe help Mr. Fuller feel a little bit
20 better in that -- I already made a statement about my
21 feeling of the people on this Board. But there are ten
22 other members here that have -- well, nine that don't even
23 have any affiliation, and there would be a majority of
24 those people if it comes down to that kind of a vote
25 anyway. Not to say that there wouldn't be some persuasion

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1 involved from the Chairman, for example, if necessary.
2 But we all have our own minds and I think feel free to
3 make our own votes, and I am just not concerned that it
4 would be an issue.
5 Thank you.
6 CHAIRPERSON ASHFORD: Okay, I think we're ready to
7 proceed.
8 Oh, I'm sorry. David A.
9 BOARD MEMBER (D.A.) BOWMAN: Just to follow up on
10 Jim's comment there, I think one thing that we need to
11 make sure that we distinguish given this potential issue
12 of conflict of interest is that we are dealing with this
13 as an advisory issue, not as an appeal issue. And I think
14 it's very clear that everybody should be able to hear
15 this, and we can discuss this. If this were an appeal, I
16 think it would be a different issue because then you may
17 have the appearance of something that would go on to
18 superior court.
19 CHAIRPERSON ASHFORD: Okay.
20 MR. STERNAL: I'm sure you all understand that the
21 issue here is the interpretation of the electrical code,
22 and in particular where we disagree with the Department's
23 interpretation as rendered by Mr. Fuller at Exhibit G to
24 the brief that I filed with you. It's page 202 of your
25 book. That's where his letter starts. We disagree with

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1 the categorical blanket exception interpretation given by
2 Mr. Fuller to the electrical code for -- or as it applies
3 to utilities within the distribution system.
4 Now, I think it's helpful to go and look at what
5 Mr. Fuller says that we do agree with. As I understand
6 it, Mr. Fuller agrees that if the work was otherwise not
7 exempt as he claims it to be, that if the contractor in

8 this case, Sound Transit, hires a subcontractor who is not
9 a licensed electrical contractor, that that is contrary to
10 the statute. He agrees, as I read his letter, that
11 there's a one-tier exemption from the utility to the prime
12 contractor for work on the distribution system.
13 He also agrees, if I read his letter correctly, that
14 if a contractor for utilities, a contractor, a first-tier
15 contractor for a utility, uses people to do electrical
16 work as defined in the statute, those people have to
17 either be certified journeymen or they have to be
18 qualified in the wiremen's program -- linemen program. We
19 don't disagree on those issues.
20 The big disagreement we have -- and it's -- we go
21 through this process in the brief to demonstrate why the
22 interpretation of the statute is unreasonable that
23 Mr. Fuller has cast. His interpretation cannot withstand
24 scrutiny. It doesn't withstand logic. It doesn't comport
25 with the way the statute is written. And his own

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1 interpretation of the statute which seeks to give effect
2 to exemptions otherwise for work contracted by a utility
3 puts a lot to what he's saying the statute should be read
4 to mean.
5 And I think what he says, as I said at the outset, is
6 that if a utility does work on the utility distribution
7 system, it doesn't matter who they hire; there's a blanket
8 categorical exception from all of the statutory
9 requirements in RCW 19.28. I don't think that's what the
10 legislature had in mind. I don't think that's a
11 reasonable reading of this statute.
12 I think to the contrary, if you read the exemptions
13 which allow a utility to be exempt from doing work with
14 its own employees from the licensing and certification
15 requirements, there would be no need for that exemption if
16 Mr. Fuller is correct that there's this categorical
17 exemption for anything a utility does with anybody on its
18 distribution system. That cannot mean that. The
19 legislature would not have written all of those carefully
20 crafted exemptions if this overarching exemption from the
21 start means what Mr. Fuller says it means.
22 I think instead of what he says it means, it is
23 fairly clear and specific that the 010 provision applies
24 to wires and installations, but not to who does the work.
25 I don't think there's any doubt that that's how that

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1 should be read. That's our position.
2 In this case, we have shown through the documents
3 attached to the brief that the -- and it's not a matter of
4 trying to get the Department to do something. But there

5 is a reason that we're here. The people who have prompted
6 us to be here, Sound Transit doing work on behalf of the
7 utility in the extension of the light rail to the airport,
8 are contracting with subcontractors who do not employ
9 certified electricians and who are themselves not licensed
10 electricians. Now, whether or not that work is impacted
11 by your decision is immaterial.
12 It's the interest of my client, the NECA chapter, to
13 have the law interpreted in accordance with the way the
14 law should be read, given what the legislature has done.
15 So I want to make it clear that we're not asking the
16 Board to tell the Department to go out and red tag any of
17 these projects or issue citations. Rather, we want to get
18 an interpretation of this statute, this very significant
19 important statute for my client that can withstand a
20 logical reading of the statute and it's not just
21 somebody's panacea to solve the problem of whatever the
22 Department wants to solve at this time.
23 I would be glad to answer any questions. But if you
24 don't have any questions for me, I know Mr. Washburn wants
25 to make some statements. And then I know that Dick Roblee

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1 wants to make statements. I do want to rely on the
2 material submitted with our brief, which I think you've
3 all had a chance to read. It's all set forth in there.
4 MR. WASHBURN: Good afternoon, Madam Chairman,
5 members of the committee. Again, my name is Steve
6 Washburn. I'm the executive director of the National
7 Electrical Contractors Association, the Puget Sound
8 chapter, and I will be speaking for all the chapters in
9 this state.
10 First of all, we're looking for advice. NECA is very
11 concerned that the Department has elected not to enforce
12 the licensing requirements of Chapter 19.28 as they apply
13 to the installation of ductbanks, underground conduit and
14 electrical vaults.
15 Notwithstanding what counsel said here, let me give
16 you two examples.
17 Seattle Center parking garage. It's location on
18 Fifth and Broad Street. The owner is the Gates
19 Foundation. The general contractor, Sullen Construction.
20 Work involved underground ductbanks, vaults, conduit is
21 being done by Merlino Construction Company, a nonlicensed
22 electrical contractor. Utilities are not involved. They
23 did not engineer the project. They did not contract
24 through the project. And they did not pay for the
25 project. This is the Gates Foundation's project.

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1 Secondly, the Mirabella job located on John and

2 Stewart or Minor in Seattle. Owner, Pacific Retirement
3 Services. Contractor -- general contractor, Turner
4 Construction. The work involved -- done again by Merlino
5 is underground duct work, ductbanks, vaults and conduit.
6 Again, it has nothing to do with the utility-owned
7 property.

8 If the Department believes there's an interpretation
9 -- their interpretation is different than our
10 interpretation, would it not be better to err on the side
11 of safety and the electrical construction industry and not
12 on the side of underground dirt movers?

13 RCW 19.28.060, (7) (8) and (9) under the definition
14 of electrical work and electrical equipment, the work
15 we're talking about here definitely falls under that
16 definition.

17 RCW 19.28.091, the licensing requirements, again, the
18 individuals, the firms doing this work are not exempt from
19 that license. Nor was it my intent -- I don't believe it
20 was the legislative intent either.

21 Electrical contractors must be licensed. They are
22 bonded. They have to have continuing education. They
23 have to get permits. They have to have inspection to do
24 this type of work.

25 We have right now in the city of Seattle and I'll use

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1 the term "dirt contractors" performing this type of work.
2 No licensing. No education. No testing. No certified
3 individuals doing this work.

4 As I was listening to testimony before, some
5 individual got fined for hooking up two wires that he
6 inadvertently forgot to take out a permit on for a house
7 for a system, and he got -- for a new system. And here
8 we're talking about conduits not installed properly or the
9 cables/conductors that run through there that affect
10 thousands and thousands and tens of thousands of homes,
11 buildings, offices and people in the city of Seattle, and
12 does the Department not inspect that? It doesn't make
13 any sense. Or require an electrical contractor to do
14 that?

15 In summary, members of the Board, NECA is asking that
16 the Electrical Board advise the Department to enforce
17 Chapter 19.28 for any and all contractors, whether or not
18 contracting directly with a serving utility and/or under
19 the control of a serving utility. We think that's a
20 reasonable interpretation of the statute, and we ask that
21 you affirm that.

22 If there's no other questions, I do appreciate your
23 time.

24 MR. STERNAL: And I want to add that we have provided
25 through Mr. Roblee a draft of a policy statement which we

1 believe works with the only way the law can be read.

2 MR. ROBLEE: Thank you, Madam Chair. Dick Roblee
3 appearing for IBEW Local 46.

4 The Department has taken a dramatically stark
5 position that if we're dealing with wires under the
6 exclusive control of the utility, then the law says
7 nothing about what business touches them or what sort of
8 employee touches them. It says nothing.

9 Several utilities have submitted positions taking the
10 same position -- the Department -- that there are two
11 different worlds, the utility world and the inside
12 electrical world, and never the twain shall meet.

13 I want to identify what's at stake here from this
14 really radical idea that they want. The Department
15 incredibly as well as the utilities, no regulation under
16 your statute of either the contractors or the people who
17 are working with utility lines. Anybody could do the
18 work. That's breathtaking in the -- well, fortunately the
19 law doesn't say that. The utilities unquestionably enjoy
20 a broad but not total exemption from licensing
21 requirements. Does the law require a utility itself to
22 get a license to do its work? Of course not. Does the
23 law require the utility's own employees to be certified?
24 No, of course not. Does the law even require the
25 utilities to directly contract with only an electrical

1 contractor? No, it doesn't even do that. But that
2 contractor must use either certified electricians or
3 linemen. Now, these are broad exemptions, but they're not
4 the total exemption that the Department and the utilities
5 want. Instead they want more.

6 Well, they don't have an answer to two things. If
7 the utility were under the exclusive control of the
8 utility and not governed by the law which is the
9 Department's position advocated by the utilities, why is
10 there a legislative enactment from I believe 1992 saying
11 -- in the contractor licensing area only certain
12 contractors that deal with utility work are exempted from
13 the licensing requirement, but others are? They draw the
14 line here. They draw the line that if the utility or the
15 entity employed by the utility, that those two entities
16 don't have to have a license and the others do. Why would
17 the legislature do that if somewhere else they had already
18 exempted this entire area from the scope of the law?
19 Well, we think the answer is obvious.

20 Now, what about the position of the Department that
21 any employee out there in this state can under this law
22 install vaults and duct work. Again, if the legislature

23 intended that to happen, why is there the second exemption
24 -- I've always called it the lineman's exemption when we
25 get over to the employee's side, not the contractor side,

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1 but the employee's side -- that says -- first of all, it
2 says the utility and its employees don't need to have.
3 But then it says the employees of the employer doing
4 utility type work don't need a certificate so long as they
5 are -- I'm leaving out the verbiage -- qualified linemen.
6 The Department says nothing about why these exemptions are
7 in the law, why they're only partial exemptions. Instead
8 they're saying no, the whole area is outside the scope of
9 the law. They don't have a satisfactory answer.

10 Now, the subliminal message you're hearing is that
11 the contractors here at the table and the unions are
12 trying to change or twist or expand the law. Well, we
13 want the law to be applied as written. Those who disagree
14 with us want to blow a huge hole in it. Well, the law
15 does allow the utilities broad authority from regulation,
16 but not total. It stops at the point it does because at
17 the second tier and beyond the utility has no direct
18 control over the contractor hired by its own contractor.

19 Here, the documents show that City Light contracted
20 -- just an example -- City Light contracted with Sound
21 Transit. City Light retains no approval authority over
22 who actually does the electrical work. Sound Transit
23 under these contracts that they think they have authority
24 to enter into could hire anyone to do the electrical work,
25 and City Light has no contractability to do anything about

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1 it. How can the ultimate people doing this work for the
2 utility be employed by the utility which is this statutory
3 requirement to avoid a license if the utility can't fire
4 them? They can fire their own contractor. They can't
5 fire the second, third and fourth tier contractor.

6 The same deal with the employee side. We would have
7 no regulation whatsoever over the actual people putting in
8 the vaults and the conduits.

9 The Board is unquestionably set up as a watchdog and
10 an advisor to the Department. And that's what we ask this
11 Board to do. We have submitted I believe it's the last
12 page of your packet a proposed policy statement that
13 addresses the three issues that we wish advice from the
14 Board on.

15 The first policy statement makes clear that there is
16 no absolute 100 percent total exemption. The second
17 clarifies what the utility exemption means and applies to
18 first-tier contractors only. And the second -- or I'm
19 sorry -- and the third paragraph simply says what the

20 linemen exemption from the certificate requirements says.
21 Thank you.
22 MR. STERNAL: I just want to add that I think there's
23 a very important policy purpose that is being served by
24 your consideration of these issues. I'll just call it one
25 issue, which is the interpretation of the 19.28

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1 provisions. And those policy provisions are in line with
2 why you are on this Board, to ensure that you who know the
3 industry and understand the risks and rewards of it, if
4 you will, you have a direct interest in how these laws are
5 to be interpreted, and you're the best qualified from your
6 perspective where you sit to make these interpretations.
7 So thank you very much.
8 CHAIRPERSON ASHFORD: Yes.
9 BOARD MEMBER PREZEAU: Is it appropriate to ask
10 questions at this time or should we wait?
11 MR. STERNAL: I'll be glad to answer questions now.
12 I offered that in my presentation.
13 CHAIRPERSON ASHFORD: Yes, Tracy, go ahead.
14 BOARD MEMBER PREZEAU: I actually have six pages of
15 questions, but some of them you've -- not all of them are
16 directed at the gentlemen that are currently sitting at
17 the table.
18 One of the -- you know, I stated before we began that
19 I'm an electrician; I am not an attorney. And I struggled
20 somewhat in reading the packet, especially where case law
21 is cited. I have not had an opportunity to read that case
22 law, nor would I understand that I would understand the
23 case law to be perfectly honest. However, as an
24 electrician, obviously I use the RCW's and the WAC rules
25 for guidance, and I have some questions I would like your

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1 -- you guys -- I actually was planning on asking both
2 sides some of these questions.
3 I'm curious as to why is it that you think -- and I'm
4 going to grab my RCW's -- why is it that you think -- and
5 I think interpretation is supported by Chief Inspector
6 Fuller's letter where he states that -- and I'm going to
7 quote it here just for ease. "The third type of
8 electrical work" -- and this is on page 12 in our packets
9 -- "The third type of electrical ... work described in RCW
10 19.28.091 is in subsection (3). This subsection allows an
11 exemption for any entity who enters into a contract with
12 an electric utility for doing the work described in
13 subsection (2). Subsection (3) does not allow the
14 utility's exemption for this work to pass through to a 2nd
15 or 3rd tier ... contractor."
16 And if you consult the appropriate RCW's, the

17 difference there has to do with I believe -- and again,
18 I'm not an expert -- with lines, wires, apparatus or
19 equipment used in the lighting of streets, alleyways or
20 public areas or squares, and I'm curious as to why
21 specifically the RCW's state and where it's the
22 Department's interpretation that there is no
23 subcontracting exemption in this segment, but there is
24 subcontracting exemption if the -- "If the work in
25 connection with the installation, repair and maintenance

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1 of lines, wires, apparatus or equipment loaned by or under
2 the control of a utility," and I struggle to understand
3 what the difference is, and I struggle to understand why
4 there is a specific clause that deals with streetlight.

5 MR. STERNAL: I'm not sure --

6 BOARD MEMBER PREZEAU: Was that even a coherent
7 question?

8 MR. STERNAL: No, it's -- the -- sort of the embedded
9 question is under the control of the utility.

10 We don't disagree with the Department through
11 Mr. Fuller's interpretation of the ability of a utility to
12 contract to a first-tier contractor and have as
13 circumstantial guarantee of good workmanship that the
14 utility which doesn't have to have a license will make
15 sure that work is done as a licensed electrical contractor
16 would. That's what the statute means I think.

17 And we agree, and I think Mr. Fuller agrees with
18 that. He wants to extend it to a third tier or a second
19 tier -- well, perhaps he doesn't, but some commentators
20 with papers in this package would extend it to a second-
21 or third-tier contractor. You know, in a way I think it
22 distorts the language of the statute. You have to be in
23 control of, you have to be the employer of that
24 contractor. You're not that if you are dealing with
25 subcontractors who are tertiary third-tier contractors. I

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1 think that's what the legislature had in mind.

2 CHAIRPERSON ASHFORD: Ron, you had a comment?

3 SECRETARY FULLER: Madam Chair, I think it would
4 behoove the Board if I went on and did my presentation
5 rather than questions and answers at this point because I
6 may be able to answer some of the questions that are on
7 the table like the one that Tracy said. That's part of
8 what I wanted to present. You know, we're not in an
9 appeal, but it's kind of the same format.

10 CHAIRPERSON ASHFORD: I don't have a problem with
11 that.

12 ASSISTANT ATTORNEY GENERAL EMMINGHAM: It probably
13 would be best to hear from all the parties and then take

14 questions and discussion.

15 SECRETARY FULLER: Madam Chair, members of the Board,
16 I've got a few slides here that I'd like to go through.
17 And the only reason that I'm doing it with slides is
18 because I think there's a lot of members of the audience
19 that need to see some of my justification for the
20 interpretation that I made rather than just hearing us
21 talk about it. So that's why I'm doing it the way I'm
22 doing it.

23 CHAIRPERSON ASHFORD: Ron, I'm going to ask that if
24 you turn your head and speak, you take the microphone with
25 you.

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1 SECRETARY FULLER: Okay, the question before us today
2 really is two parts I think. And first is, is the
3 electrical utility transmission or distribution work
4 regulated by RCW 19.28. The second one that seems to be a
5 prime piece of NECA and IBEW's argument revolves around
6 the area of "control" or even "exclusive control." The
7 RCW and the WAC rule both talk about "control" in both
8 ways. They talk about it just as plain control. And they
9 also use the word "exclusive" sometimes.

10 One of the other areas that they brought up
11 significantly this morning is the difference between
12 licenses and certificate. So I'll be talking about that a
13 little bit later in the presentation here.

14 (Commencing with slide presentation) Okay, what we're
15 talking about is a system that looks something like this.
16 Some of what we're doing here today is underground rather
17 than overhead on the poles, and it's not a house out
18 there; it's a system that may be supplying buildings that
19 are used for commercial or industrial or housing, either
20 one. The bottom line is that what this project's all
21 about is that they're relocating those distribution lines,
22 and the distribution lines that are ahead of the piece
23 that's regulated by Chapter 19.28.

24 So we've got two separate issues here. One is what's
25 ahead of the point of service, and what's behind the point

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1 of service. We regulate everything that's on the load
2 side of the point of service. The utilities oversee and
3 control everything that's ahead of that point of service.
4 That's been very clear through time I think.

5 Back in 1981 is when this first came to the
6 legislature I think, and that's when they adopted the
7 sections, and in particular 010 in 19.28 that gave the
8 utility carte blanche exemption from anything within
9 Chapter 19.28.

10 That got revised again in 1992 because the same kinds

11 of questions were being asked at that time. Is a license
12 required? Is a license and certification part of the
13 installation process? And I think if you read the --
14 actually the very first line of section 010, paragraph 1,
15 it says that "All wires and equipment, and installations
16 thereof," and it goes on and on with a few words, but
17 ultimately it says shall comply with this chapter.
18 Part of this chapter is licensing and certification.
19 So I guess I want to refute what they have said previously
20 here in that installation does include who and what and
21 how the job is done. It's not just the wires. It's not
22 just the code requirements. It's also who does the work.
23 And I think the Board's held that in their regard in
24 previous decisions that they've made before the Board too.
25 This is more like what we're looking at on the

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1 Seattle City Light project. A lot of what they're doing
2 is installing ductbanks. Some of the arguments that
3 you'll see in the presentations from IBEW and NECA is that
4 there's no control, that there's intermingled systems,
5 those kinds of things.
6 What you can see in a ductbank for those of you who
7 don't know is that you can have multiple conduits, and
8 they can serve multiple systems. There very well be may a
9 utility transmission line in that ductbank along with
10 telecom along with the telephone along with anything else.
11 It can be multiple systems. The key is is that inside of
12 that pipe only contains one system. And each utility
13 that's involved controls that pipe. It's not a comingled
14 system.
15 A little bit of history. We started with regulation
16 of electrical installations way back in 1913. It included
17 electrical and utility work, electrical construction work
18 also. At that time the utilities actually didn't have an
19 exemption.
20 And in 1919 it moved up to where they actually
21 required electrical contractor licensing. And they
22 started making distinguishing comments about how an
23 electrical utility and electrical contractor are different
24 from each other.
25 In 1935 they added standards and inspections.

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1 And 1973 they added electrician certification. But
2 they clearly gave an exemption at that time for utility
3 workers.
4 And then in 1992, as I've said before, they made an
5 attempt to clarify that no license is required for persons
6 or firms.
7 People that are involved in this particular issue

8 that's been brought before us are Seattle City Light,
9 Sound Transit and Sound Transit's subcontractors.
10 Seattle City Light is an electrical utility. I
11 believe that they do exclusively control the project as it
12 regards to their contract with Sound Transit. They have
13 the guidelines. They set the mandates of the type of
14 equipment and how it's to be put in, and they also do the
15 inspections of it. So they are maintaining control of it.
16 Sound Transit is a municipal corporation. And by
17 that corporation status, they have an exemption to the
18 general contractor registration laws. So they can act as
19 a general contractor even though they don't have a general
20 contractor registration. Part of what that gives them is
21 the right to subcontract. I want you to be sure and keep
22 that in mind as we go through this. The subcontractors
23 that they're hiring are either general or electrical
24 contractors. If they're working on the utility
25 distribution relocation, they are under the control of

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1 Seattle City Light.
2 After I'm done here, I'll get Mr. Lee to confirm
3 that. He's an attorney for Seattle City Light. So he can
4 talk about exactly what type of control that Seattle City
5 Light exerts over this project. And it's similar to all
6 other projects across the state too, whether it be some of
7 the examples that Mr. Washburn was giving or Seattle City
8 Light's project.
9 And sometimes the utility doesn't maintain control.
10 When they don't, then my interpretation of the Seattle
11 City Light project does not hold. Because if there's no
12 control, then we do take jurisdiction of it. And we've
13 done that in the past.
14 Other electrical utilities, as you've seen in your
15 packet, are very much interested in this. Because change
16 in my decision in this regard would dramatically impact
17 how the utilities do business across the state, especially
18 in situations where they get into an emergency crisis
19 mode, for instance, after a big wind storm where they've
20 got maybe hundreds of thousands of people out of service,
21 they contract out to one contractor, and that contractor
22 may very well be subcontracting to other contractors.
23 With a difference in my interpretation, that would not be
24 allowed. So this is a huge issue, not just for Seattle
25 City Light's project; it's a statewide issue.

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1 Some of the terms that you're going to hear are
2 "service point." We do have a definition in the NEC for
3 that. It's the point of connection between the facilities
4 of the serving utility and the premises wiring.

5 "Point of contact" is a WAC rule definition that we
6 have. It basically says the same thing. It reinforces
7 that drawing that I had up at the front of the
8 presentation and what a utility system means. It means
9 it's owned by or under the control of the serving utility.
10 I think that's very key. Because it doesn't have to just
11 be owned by them; it can be just under the control.
12 "Control" if you look in the dictionary says that if
13 you exercise authority or dominating influence over,
14 regulate, to hold, and restraint, to check. What that
15 means is what I'm interpreting as what the utility is
16 doing in this particular case is what most utilities do
17 statewide. Again, they set the mandates. They set the
18 standards. They set the type of equipment. They set how
19 it's to be installed. They have guidelines for that that
20 are formal and published, and they follow up with
21 inspections of their own to make sure that that project is
22 done according to their standards. And I think that
23 clearly meets the definition of what "control" is.
24 "Exclusive" comes up sometimes in the arguments that
25 you're hearing. All "exclusive" means is that it's not

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1 divided or shared with others. And I believe that Mr. Lee
2 can confirm that Seattle City Light is not sharing that
3 ability to inspect with anyone else.
4 "License" -- to the department "license" and
5 "certificate" can be somewhat confusing sometimes. We
6 consider them to be the same in reality. And by legal
7 definition I think you'll find that they are the same even
8 though the statute sometimes uses them independently of
9 each other. There's places where the "license" word is
10 used in certification areas. There's places in the
11 licensing area where "license" is used and it means
12 "certification." Electrical administrator requirements is
13 a good example of that. One of the requirements for an
14 administrator is to ensure that all licenses are had by
15 that contractor. And the Board has determined in the past
16 and so have some of the courts that "license" means
17 "certificate" in that case. And when you look at the
18 Black's Law Dictionary in terms of what a "license" and
19 "certificate" are, you'll also find that they mean the
20 same thing.
21 Some of the statutory issues, just very quickly, the
22 main basis originally for the utility exemption is found
23 in 19.28.010. It says that all wires and equipment that
24 fall within section 90-2(b)(5) of the National Electrical
25 Code, 1981 edition are exempt from the requirements of

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1 this chapter. That means to me as a reader that

2 everything in 19.28 is exempt. That includes
3 installation methods, and it includes licensing and
4 certification. It includes everything in the chapter. No
5 question about that.
6 This section is not silent on who can do utility
7 transmission and distribution work as it relates to 19.28.
8 That exemption specifically provides exemption to the
9 contractors and the workers and the installation methods.
10 At this level it does not address subcontractors or their
11 workers. But the 1992 changes do.
12 90.2(b)(5) in that 1981 code says that this code does
13 not cover installations under the exclusive control of the
14 electric utilities for the purpose of transmission and
15 distribution of electrical energy. That's what we're
16 talking about here. We're talking about utility systems
17 that are owned by Seattle City Light and controlled by
18 Seattle City Light.
19 90.2(b)(5) also says that it's not the intent of this
20 section to cover premises wiring or wiring other than
21 utility owned metering equipment on the load side of the
22 service point. So that means that if it's on the load
23 side, it is under 19.28, and it's ours.
24 19.28.091, paragraph (1) is the beginning of the
25 changes that were made in 1992. What it says is that no

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1 license shall be required from any utility, person, firm,
2 partnership, corporation or other entity employed by the
3 utility when that wiring is owned or under the control of
4 the utility and used for transmission or distribution.
5 And again, it's very important to note that it's owned or
6 under the control. So this section does not prohibit
7 subcontracting. And that's very important to remember
8 that it does not prohibit the subcontracting.
9 Then we move into a statute that we don't normally
10 talk about in here. 18.27. And that's the contractor
11 registration chapter of the RCW. What it basically says
12 in 010, paragraph (1) of 18.27.010 is that a contractor is
13 any person, firm or corporation who employs members of
14 more than one trade on a single job or project.
15 What 18.27 allows you to do if you're a general
16 contractor is to subcontract work. So if a general
17 contractor in the Department's opinion is working for a
18 utility as that primary subcontractor, they have a right
19 to subcontract. Just like contractors under them, if they
20 have the appropriate registration, are allowed to
21 subcontract. We don't believe that you can remove their
22 rights as a general contractor just because the statute in
23 19.28 didn't address subcontracting. It remains silent on
24 the issue. When it remains silent, it allows them their
25 rights. It does not take their rights away as a

1 subcontractor.

2 19.28.091, paragraph (5) goes on to even more
3 liberally interpret 091, paragraph (1). Because it says,
4 again, that no license shall be required for my person --
5 it names a person again, not just a firm -- firm,
6 partnership, corporation or other entity exempted in
7 19.28.010.

8 So we've gone full circle now. We're right back to
9 the original utility exemption. And all they've tried to
10 do with this 1992 change is to clarify that yes, in fact,
11 the utilities have complete exemption from 19.28,
12 subchapter RCW, when it comes to utility distribution and
13 transmission work. It's very clear on that issue.

14 Again, the first picture that we started with. What
15 we're talking about here is the work that is controlled
16 and owned by the utility. And sometimes those can happen
17 at different points in time.

18 It's not uncommon in the state of Washington for a
19 utility to allow an owner to have ownership of the
20 installation up to a certain point. But they control it
21 usually. And a typical example of that would be a
22 subdivision where you're putting in a lot of houses, the
23 utility -- it wouldn't be uncommon for a utility to tell
24 the developer to install the distribution system for that
25 subdivision. And that developer owns it until it's turned

1 over to the utility. But the utility maintains control of
2 it throughout the project. When that happens, there is a
3 total exemption in the Department's view from Chapter
4 19.28. And if they want to use laborers, they can.

5 There's other issues that they have to resolve with
6 people like DOSH. DOSH is the new term for WISHA, by the
7 way, in case you didn't know. They've renamed themselves.
8 But sometimes in their requirements they say that you have
9 to be a qualified person. But that's not our job. That's
10 not our job to deal with. That's their job to deal with.
11 The Electrical Board shouldn't be interested in that, and
12 neither should we from a legal perspective with what we're
13 empowered to regulate. So even though there may be some
14 Federal or other State requirements for being a qualified
15 individual, it doesn't mean that they have to be a
16 certified electrician. It doesn't mean that they have to
17 be a licensed electrical contractor. "Qualified" does not
18 mean that you have to have a license or certificate in its
19 broad sense.

20 So that's basically what I have.

21 Again, the type of work that we're talking about here
22 is the distribution and transmission system of the

23 utility. I don't think anybody is debating that. The
24 exemption I think was even better clarified, and I guess I
25 will be in opposition with IBEW and NECA on that with the

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1 1992 changes to the RCW because I think it's even more
2 clear now that licenses and certificates are included in
3 that 010 exemption. Because that's what they've said.
4 They said it in 091, paragraph (1), and they even
5 strengthened it in 091, paragraph (5). There is no
6 license or certificate required for this type of work.

7 I just don't think that their -- you know, they've
8 said my logic isn't logical. I don't believe that their
9 logic -- argument is logical either. And I definitely do
10 not believe that the proposed policies that they're
11 recommending should be implemented at this point.

12 So I'd like to finish off with letting Mr. Lee
13 explain what type of control and ownership that they have
14 with this project.

15 MR. LEE: Thank you. Engel Lee here on behalf of the
16 City of Seattle, in particular for City Light.

17 And I just can really confirm what Mr. Fuller said
18 today and what's contained in the packets about our
19 exercise of control over the particular contracts and
20 construction that went on with respect to Sound Transit.

21 Generally what occurs is we either provide them
22 specific designs for them to build to. Or if they perhaps
23 have their own engineering firm, they'll submit designs to
24 us to -- or we'll talk about what needs to be done, and
25 they'll submit designs to us. And we'll review, edit and

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1 approve what's done there. And then when it translates to
2 the field, and in particular with Sound Transit, we
3 essentially have someone in the field inspecting anytime
4 they do work for the utility. Those inspections range
5 from making sure that the product they're installing, the
6 conduit, the ducts themselves don't have cracks or that
7 they're not deficient in any way. The same with the
8 vaults. Even with regard to the backfill to make sure it
9 comports with our needs. After it's installed, we're in
10 there looking and making sure that it meets our standards
11 and specifications. And I guess that's -- you know, we're
12 unlike most consumers because we know the specifications
13 we need. In fact, we have standards. We have internal
14 standards for what's needed. So we're not just looking to
15 make sure something's in the ground; we're looking to make
16 sure it meets our needs.

17 And then finally we have the right to reject
18 anything. And we do take a final look and a final
19 inspection and final ownership at the end of the day.

20 Which means if something tends to go wrong, we're on the
21 hook for the immediate fix. And so we do take care to
22 make sure that things go right.
23 The other thing I guess I would stress with respect
24 to Sound Transit contracts is the work that we're talking
25 about is not wiring work. We are talking about digging

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1 trenches, laying down ducts as was shown in the picture in
2 Mr. Fuller's presentation, and putting in concrete vaults.
3 All of the wiring work in all of our contracts when we're
4 doing any type of utility relocation on the -- we do all
5 our work ourselves. All the wiring work is done by the
6 utility.
7 And then, you know, I again emphasize the point that
8 we do not share any of our utility facilities, our vaults,
9 our duct vents. Those are all exclusive to City Light.
10 And unless there's any questions, I think that's it.
11 SECRETARY FULLER: Madam Chair, I would like to add a
12 couple of things. One of the things that Mr. Washburn
13 said was that the installations could be bad. But I don't
14 think that's the case in this situation. And I don't
15 think it's the case with the way most of the utilities do
16 their work. And I think I could almost say "all" there
17 and be comfortable with it.
18 The installations aren't bad. They're inspected by
19 the utilities, and they're not bought off on and ownership
20 taken over by the utilities until, like Mr. Lee said, that
21 they are certain that they meet their criteria and their
22 standards.
23 The other thing that Mr. Washburn commented on were
24 some of the different examples of different kinds of
25 projects. And I agree with him that different projects

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1 can have different status. If the utility does not
2 maintain the control of that project, as I said earlier --
3 and to us that means that they set the standards and do
4 the inspections and make sure that it meets those
5 standards -- we will take control of it, and there will be
6 no exemption. And if we find somebody that's in that
7 situation, we will cite them, just as we have in the past.
8 So I think you have to take the examples with a grain of
9 salt because every situation isn't the same.
10 One of the things that Mr. Roblee said that I guess I
11 take some issue with is that the utility has no control
12 over the lower-tier contractors. And I highly disagree
13 with that too. They have significant control because they
14 control the prime contractor, and they are doing the
15 inspections. And if they find a job that is not meeting
16 the standards, and that's happening to them over and over

17 and over, I think it's very safe to assume that the
18 utility will take issue with that prime contractor and if
19 necessary fire the prime. As soon as you've done that,
20 you've automatically fired every tier subcontractor under
21 them. So I think they've got very much -- I think they
22 very much retain the control over their projects.
23 MR. LEE: If I could add just one more point to that
24 last piece, you know, that's exactly right what Mr. Fuller
25 just said.

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1 You know, we control the general contractor. And,
2 you know, while, you know, you could argue that we don't
3 have any control over, we -- because of no direct
4 contractual relationship with the subs, we might not have
5 direct control. The sub could argue -- if we go and make
6 a complaint about an installation, the sub could argue to
7 the general contractor, you know, we could, you know, fill
8 back in the trench and say it's not done. We just simply
9 have to reject what they've installed. And then they have
10 to dig it up and do it over again.

11 So I do think that there is a lot of control that we
12 have/exercise.

13 SECRETARY FULLER: Madam Chair, the Assistant
14 Attorney General Jason McGill is also with us today. He
15 has a few points to make, and I know that Mr. Cary has in
16 the audience too, and maybe some of the other utility
17 folks. As you mentioned earlier, we are going to be here
18 for several more hours. I would suggest that we do take a
19 break because the day could drag on.

20 CHAIRPERSON ASHFORD: What's the lunch room look like
21 about this time of day?

22 SECRETARY FULLER: It should be good. We should be
23 able to get in and out in a half hour or so.

24 ASSISTANT ATTORNEY GENERAL MORTINSON: I just ran up
25 there, and I think it's safe to say that we might be able

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1 to do it in a half an hour from what I saw.

2 CHAIRPERSON ASHFORD: Is there any objection to
3 taking a half hour, 30 minute break at this point? I
4 guess not.

5
6 (Lunch recess taken.)
7

8 CHAIRPERSON ASHFORD: Okay, are we ready? Where did
9 we leave off?

10 ASSISTANT ATTORNEY GENERAL MCGILL: Madam Chair,
11 Jason McGill with the Attorney General's office, assistant
12 attorney general. Just a few follow-up comments.

13 Today, you know, it's been an interesting hearing

14 because this is an interpretation and advice hearing. And
15 so it's not an appeal. It's not a citation. That's why I
16 have not spoken and let Ron take the lead on this. And
17 certainly this is Ron's interpretation. So all the
18 deference should be provided to Ron, and that's why he's
19 spoken. But, of course, he and I have had much discussion
20 with regard to these issues. And there are a few I think
21 probably it's fair to say more finer legal points that I
22 think I should make in reference to all of this.
23 And you know what this is is a mess. This statute is
24 fairly complex. It is fairly difficult to understand the
25 intricacies between 010, 091, 261, the NEC. And so I'm

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1 here to answer any questions from a legal point of view
2 that maybe you want to defer to me on and just to make a
3 few additional points from the discussion today.

4 From an advisory point of view, from what the
5 Department has done, you should concentrate on the letters
6 and the letters only. And these letters are the ones Ron
7 wrote and the one the Director, Gary Weeks, wrote that I
8 believe are referenced in the Board packet starting on
9 page 9 and also referenced in other places, but I'll do
10 the page 9 and 10.

11 This is the letter Director Weeks wrote. This is the
12 interpretation of the agency. This is the interpretation
13 of which I believe most accurately you are asked to advise
14 on.

15 And then the next letter, of course, is referenced to
16 November 21st --

17 CHAIRPERSON ASHFORD: Would you mind pulling the mic
18 a little closer. There's a problem hearing.

19 ASSISTANT ATTORNEY GENERAL MCGILL: How's that? Is
20 it any better?

21 So the next letter is on page 11. 11, 12, 13, 14.
22 And that's more substantive. And that's the letter from
23 the Chief.

24 So from a advisory point of view, it is the position
25 of the Department to specify your advice with regard to

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1 this action because quite frankly that is all the
2 Department has looked at. That is all the action it has
3 taken, critically with regard to the Sound Transit
4 project.

5 There have been some discussions about other projects
6 out there. And we haven't looked at that. The Department
7 has not looked at any other project besides the Sound
8 Transit project. And so that's the interpretation that is
9 at issue today, and one that the Department would like you
10 to focus on in terms of entertaining this particular

11 petition.

12 The other issue is a fine overall legal issue. It's
13 with regard to the language of the statute, and
14 particularly 010.

15 010 refers to all wires and equipment that fall
16 within the section. And Ron did an excellent job
17 describing and pointing that out to you. And that's the
18 NEC provision.

19 So you also have to -- so you first look at 010. And
20 then you look at the NEC. The NEC is not law, but it's
21 incorporated by reference in this statute, and as such
22 should be interpreted as part of the statute. So we have
23 to look at the NEC 90-2(b)(5). And that is the exemption
24 for the utility work.

25 And you saw this picture that just -- had a house and

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1 all the utility network after that. And that picture is
2 also in the NEC. That's the diagram. That's the
3 description that the NEC provides. What it states is is
4 that exempt work? And the chapter in the RCW 19.28 does
5 not regulate any work from the customer side of that
6 picture. So that would be that house and the point of
7 service contact.

8 So it is fairly clear, which is contractor to what
9 the petitioners would have you to believe, that the
10 statute is specific otherwise. It is actually fairly
11 specific that it exempts work done on the utility side.

12 Now, one part of the 010 that has not been mentioned
13 is the very first sentence, and critically "in and or
14 about buildings and structures." That is what is
15 regulated by 19.28. "In and or about buildings or
16 structures." So that point must be read in conjunction
17 with the next sentence. That's NEC 90-2(b)(5), which must
18 be in itself read in conjunction with 091 and the rest of
19 the Chapter 19.28.

20 And so to read it any other way, in that to read that
21 the utilities are somehow not exempt for a portion of that
22 work is contrary to not only the NEC; it's also contrary
23 to that provision in 010 and the provisions in 091. This
24 can be read harmoniously. It is not something that one
25 statute says and another statute contradicts. There is a

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1 working statute here and chapter.

2 It is interesting to note the '92 legislation. In
3 the '92 legislation in the final bill report of that
4 legislation, which incidentally to define something, we
5 take a look at first the definition in the statute. If
6 there is no definition in the statute, take a look at what
7 the definition is in normal course. Webster's Dictionary.

8 You take a look at what the definition is as used in the
9 industry. You take a look at what the definition is that
10 the legislature applied, maybe not made into law, but what
11 they discussed inherent. You take a look at that
12 legislative history. So these are all the things that
13 unfortunately we are faced with having to do, particular
14 with the "control" portion of the statute. What does
15 utility control?

16 There's been some discussion that the NEC specifies
17 only exclusive control. This is an interesting point.
18 NEC, again, 90-2(b)(5) states, "Installations under the
19 exclusive control of electric utilities for the purpose of
20 communication, comma, or metering semicolon." From a
21 legal point of view, that semicolon may be important. And
22 actually from a interpretation point of view, one of the
23 fundamental points in the interpretation is that the thing
24 needs to make sense.

25 So my point being, if you would read exclusive

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1 control after the semicolon, in other words, apply
2 exclusive control to the clause after the semicolon, then
3 the portion of after the semicolon actually does not make
4 sense. So exclusive control does not necessarily apply to
5 the portion after the semicolon in the 1981 code, which is
6 the code incorporated by law. So we may or may not be
7 dealing with exclusive control. And that is not something
8 that we necessarily made an interpretation point on with
9 these letters. And that's why I also wanted you to focus
10 on the letters, the actual letters the Department wrote,
11 that's what's at issue here. But since this petition has
12 come in front of you, these other issues have become
13 important.

14 So the first point there, exclusive control is not
15 necessarily the phrase, the term to apply here. 091
16 refers to control. 010 doesn't refer to anything.

17 And there's a few other points.

18 The '92 legislation, which 091 essentially became
19 about from, and Engrossed House Bill 2053, final bill
20 report, states nothing to do with exclusive control. It
21 states "owned by or under the control of the utility." So
22 there's an "or." You either own it or the utility
23 controls it. And I certainly defer to the utilities in
24 terms of describing what that type of industry standard of
25 what they decide is control. And certainly the Department

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1 might be very interested in certain projects that they
2 lose control on, and certainly that might become an issue
3 under 19.28. But quite frankly that is not what we have
4 made an interpretation on. What we made an interpretation

5 on was what you have in those letters. And in those
6 letters, Ron and the Department took a very detailed look
7 at this particular project and found that control was
8 sufficient.

9 Another point to make -- and again, I think Mr. Cary
10 would make that point for the utilities, and I would defer
11 to him for the substance of that -- is the utilities
12 aren't operating here under an unregulated state. They
13 have other regulations that apply. And I can't speak with
14 real information what those regulations are, and so we'll
15 defer to Mr. Cary on that. But just keep in mind, 19.28
16 matters but not for utilities necessarily. And there are
17 other regulations that do matter for utilities. So we're
18 not letting utilities operate in a totally free
19 unregulated manner. You know, they're regulated. It's
20 just important to note in understanding what 19.28 is
21 trying to do.

22 So the language in the statute is not exclusive
23 control. It may be in the NEC. And Ron did a nice job on
24 giving you some of the definitions for "control" or
25 "exclusive." And Mr. Engel (sic) from the City of Seattle

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1 described a little bit more about what that control
2 process is. And I'm sure John Cary will also discuss a
3 little bit more about what that control process is. But
4 that does seem to be a fairly critical issue with
5 describing that. And all I would mention is not
6 necessarily exclusive control matters; we're talking about
7 owned or controlled.

8 You know, there was a point made with regard to 261,
9 which is 19.28.261, sub (4). You know, that also supports
10 the 010 total exemption. It does not, as the petitioners
11 stated in their brief, imply that all utilities' employees
12 must be certified. It states utility or its employees.

13 Again, we need to read these things carefully in
14 order to understand what exactly the statute implies.

15 Another point on control is a case cited by the
16 petitioners -- and that's Brashear -- in the Department's
17 point of view is not a point. This case was a Court of
18 Appeals case that was consequently reversed by the Supreme
19 Court and sent back and remanded. It is cited here as
20 remanded on other issues. I disagree. I believe it is
21 remanded on the primary issue that the case at the Court
22 of Appeals -- which in that case essentially defined
23 "exclusive control," so that's why it's important --
24 should not be read by this Board as meaning anything more
25 because it was reversed by the Supreme Court. The Supreme

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1 Court has the ultimate control -- authority in terms of

2 what the law is.
3 There were mentions of I believe a Seattle Center
4 project, a Pacific Retirement Services project. The
5 Department has no knowledge of these as far as I know and
6 is not an issue with this case with this interpretation.
7 It is very probably difficult to advise the Department
8 what to do with these without having the facts in front of
9 you. And certainly I think the best process would be to
10 let the Department do its job. And if there's a challenge
11 to that particular piece, then perhaps that comes back to
12 the Board.
13 You have to read the statute together. 010 does
14 matter. 010 applies a fairly fundamental, prime exemption
15 -- we're dated back here to 1919 for these exemptions.
16 19.28 was simply not a law meant to regulate
17 utilities. It was simply not a law meant to regulate
18 anything but the building or the structure, and the
19 utilities come under a different set of provisions. And
20 so to read anything more to that would be a departure from
21 the consistent interpretation of the Department for years
22 and of which the Electrical Board has also existed for
23 years, and so this would be a departure. And I'm certain
24 that Mr. Cary could address any more further details with
25 regard to the actual utility. I know he has some

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1 knowledge with regard to the lengthy history as well.
2 Thank you.
3 CHAIRPERSON ASHFORD: Thank you.
4 We do have four individuals that have signed up to
5 speak on this issue. I'll take them now in order of
6 sign-in sheet.
7 Mr. Cary.
8 MR. CARY: Madam Chair, may I bring up Rich Adams?
9 (Inaudible comments.)
10 CHAIRPERSON ASHFORD: They signed in right after you.
11 MR. CARY: I'm John Cary. I'm an attorney. My
12 address is 1201 Third Avenue, Seattle 98101. I represent
13 Avista Utilities in this matter.
14 I have with me at the table Rich Adams from Puget
15 Sound Energy, Larry Bekkedahl from Clark PUD.
16 I want to start -- Mr. McGill referred to things that
17 I'm going to say. I want to start by saying Mr. Fuller's
18 presentation was spot on. Mr. McGill's presentation, he
19 hit these points. So in some respects there's not a lot
20 for me to say on statutory interpretation areas. I can go
21 on at enormous length if you'd like, but I don't want to
22 bore you. But rather than listening to a lawyer, having a
23 lawyer talk to you, we have two people from the utilities
24 that are expert in the area of the NESC standards,
25 compliance with the statutes. And I have them here today

1 because I want to give the Board real background and
2 understanding about how the utility industry works.

3 The issue before us is the picture that Mr. Fuller
4 put up there, the picture with the two circles. In the
5 papers that I submitted to you, I think I referred to it
6 perhaps as the two world. That may have been a little
7 overblown. I think the two circles is a good description.
8 But I think it's important that you have a really good
9 understanding of the two circles. And really more to the
10 point, that you have an understanding of that big circle,
11 the utility circle.

12 You spend most of your time, probably all of your
13 time dealing with the electrical contractor circle, and
14 not much at all, if any, with the other circle. But that
15 is the fundamental issue before us.

16 IBEW and NECA have asked you to expand that one
17 circle to cover the whole picture, to erase the division
18 in the two circles, to erase that, and have one circle
19 cover everything, and that is of enormous importance.

20 The number of utilities that have sent letters into
21 you, the utilities in the audience, the people here speak
22 to the importance of this issue to the electric industry.
23 The utilities here who've indicated concern with this
24 proceeding represent 80, 90 percent of all of the electric
25 consumers in the industry. What IBEW and NECA have asked

1 you to do has a dramatic substantial impact on the utility
2 industry, and that's the reason we're here.

3 With that, let me turn this over to start I think
4 with Rich.

5 MR. ADAMS: My name is Rich Adams. I'm with Puget
6 Sound Energy. I'm an electrical engineer. I've been with
7 them for 27 years now. In that 27 years I've been
8 involved in the construction and design of power electric
9 utility systems. By the way, Puget Sound Energy is the
10 largest electric utility in the state of Washington. We
11 have over a million customers. I think many of you are
12 probably one of our customers.

13 For the last 17 years I've worked in our standards
14 and compliance department doing electrical standards for
15 our system in operating standards, construction standards,
16 that sort of thing. I'm a member of the (inaudible) Power
17 and Engineering Society. I'm also a member of the USAC
18 committee, which is an L & I advisory committee on
19 electrical worker safety rules. I'm currently the
20 chairman of that committee. I've been involved with the
21 Western Underground Committee, a committee of electric
22 utility engineers from the entire West Coast. So I've

23 been around some.

24 The first thing I want to talk about is a little bit
25 about the regulation of utilities. You heard earlier that

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1 we are a little bit unregulated or our contractors are
2 unregulated.

3 In the state of Washington, WAC 296-45-045 requires
4 that we do our designs per the National Electrical Safety
5 Code. And it is this book (indicating). A little bit
6 different than the NEC. This is the book the utilities
7 must follow. And all of our standards, all of our designs
8 do meet that. It's a little bit different book than
9 you're used to seeing. It's more performance based than
10 as specific as the NEC.

11 For instance, a great example I like to use is depth
12 of burial conductors, always an issue to utilities because
13 we do a lot of underground work. It tells us that we have
14 to bury them deep enough to protect them from what's
15 going on above. Then after that, it has a table. It
16 gives us some dimensions that are pretty good, but it
17 doesn't give us specific rules that electrical inspectors
18 and electricians are used to seeing. You know,
19 electricians see you've got to do this exactly like this.
20 This book tells you what you want to accomplish. It
21 doesn't tell you how to get there. So it's a little bit
22 different code than what most of you are used to seeing.

23 Talking a little bit about the design construction
24 process that we go through, because once again we come
25 back to the unregulated issue of some of these contractors

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1 and to the control issue that's been talked about so much
2 this morning.

3 Generally, when these relocation projects like the
4 Sound Transit project came up, in our utility we nearly
5 always do the design ourselves, or we have our main
6 subcontractor doing the design work. But that design is
7 approved by us, always reviewed by us, and it's the way we
8 want it done. It follows the codes. It follows the
9 standards that we -- and I have two examples of those
10 books, and I've got five or six more like this. A lot of
11 paper on how to build lines and how to design lines, that
12 sort of thing. And we expect people to follow them who
13 are working for us. And we check to make sure that they
14 do. We always maintain the right of refusal of that
15 design work if somebody else is going to do it for us.

16 The next process in any of these jobs is the civil
17 construction work, the duct and vault work which was --
18 you saw on the screen and which seems to be the bone of
19 contention here. That may be done by our employees. It

20 may be done by contractors. It may be done through an
21 operation like Sound Transit as a general contractor who
22 may sub that work out. As you heard the people from City
23 Light say, we maintain ultimate control over that work.
24 We accept or reject the final product in the end no matter
25 who does it. We hold the contractor working for us

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1 accountable for whatever subcontractors they use for their
2 work. And we find that that's a very effective way to
3 control our work. We have no problems with it. We always
4 get what we want that way.

5 The third step in the duct and vault work is what we
6 describe as civil work. It's basically pipes and it's
7 concrete boxes. And then after that once that's installed
8 and built, then we move on to the electrical installation,
9 which is the wires, the cables, the transformers, the
10 connectors, the things that actually finally get to the
11 final home or business to serve them. And we can use a
12 different group of people for that. That's where we
13 generally use linemen for that, people who are skilled,
14 who are qualified in doing this kind of -- especially
15 utility type of work. So it's a different process.
16 There's a step in civil work. And then it goes to
17 electrical work. And it's a two-step process for us. But
18 once again, we get the work the way we want it. We're
19 happy with the way we do it. We've been doing it this way
20 for a very long time, and we see no reason at this point
21 for the Board to change the way we do it.

22 That's all I have to say.

23 MR. BEKKEDAHL: Thank you, Madam Chair, members of
24 the Board. My name is Larry Bekkedahl. I'm the director
25 of engineering for Clark Public Utilities. And I guess as

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1 a little bit of a background on myself, I've been on both
2 sides, the private side and the public side, of the
3 utility business. And I can say as of this summer I've
4 been in it for a quarter of a century, not quite as long
5 as Richard has, but 25 years. I started with Montana
6 Power, then with Pacific Power or Pacific Core for 18
7 years. And then I've been with Clark now for five years.
8 And I've seen -- I've lived in not only the state of
9 Washington, but Montana, California, Oregon, Idaho,
10 Wyoming, and now back in Washington again. So I've seen
11 most all the construction types and styles in the
12 Northwest and how utilities perform that function.

13 And I would follow right along with what you've heard
14 from Mr. Fuller, with all the other speakers that have
15 spoken on behalf of the utilities here that they are right
16 on the mark as far as how we conduct our business. And I

17 can say with confidence the National Electric Safety Code
18 is our Bible in terms of it's an American national
19 standard and is accepted as such.

20 We build our standards. And when I started as an
21 engineer with Pacific Power, my first position was in the
22 standards, much as Rich talked about, in creating those
23 books. I didn't want to bring all of ours from Vancouver
24 because you sometimes feel like you've got a truck load of
25 them. But we built those standards, and that's what we

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1 live by. And those become the basis for how we construct
2 our business.

3 I do want to give you a couple of quick scenarios
4 that go on every day in utilities and some things that you
5 might think about as you think about this whole scenario.

6 For instance, cities that want to underground and
7 beautify the downtown areas, and so they come to a
8 utilities, and they ask, "We want to go from overhead to
9 underground." We cooperate with those cities and come up
10 with a way that financially makes it feasible for them as
11 well as ourselves. And in many cases it means they're
12 doing civil work. They're doing road improvements,
13 usually with those projects, sidewalks and the rest of the
14 beautification. And so they actually bid out all the
15 civil work. We give them the designs that we want. We
16 hand that material to them. They then bid that work out,
17 hire the contractors, put in the civil work, we come and
18 inspect it to make sure it's built to our standard, and
19 then we install our wires into it and create the system.

20 That tends to be a very economical means of producing
21 that product because the cities are doing all the civil
22 work, have one contractor doing it all. It works very
23 well for us. And that's been the norm for all utilities I
24 think up here in the Northwest.

25 The second example is our own system. The State

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1 department may come to us and ask for a road widening or
2 the county or the city. And we try to, again, work with
3 them if it's possible to bid that work with their civil
4 work and putting in the ducts, the vaults, the conduit, or
5 we'll keep it separate in our contracts, and we physically
6 ask for a different contractor to do the civil work than
7 who does the electrical work. And so we keep that work
8 very separate and distinct in how it's done.

9 The third example I use is the standard residential
10 customer. And that customer, we may ask that they put in
11 their conduit system, and then we come out and inspect it,
12 and if it meets the code, meets our standard, then we
13 install our wires and accept that system at that point.

14 But at any time as we look at their system as it's
15 being installed for us, we can reject it. So if it is not
16 meeting our standards, we reject those. And we have done
17 that. And we have rejected contractors because of that.
18 And we evaluate their performance so the next time it
19 comes for a bid we'll actually reject that contractor as
20 well if they're not performing to that standard.
21 So I want to say that we do not take the National
22 Electric Code, you know, in a light manner. It is our
23 Bible, and that's what we live by. And, in fact, if you
24 see the case law that involves the utility business, guess
25 what's quoted by the attorneys and those that are actually

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1 maybe asking us to pay for damages, et cetera, that may
2 have happened. We take public safety extremely serious
3 and the reliability of our systems. You hear that day in
4 and day out I think from us. We want to keep the lights
5 on. And that's our business. So we take it very
6 seriously. And we don't want to leave you with the
7 impression that our codes and standards are taken lightly.
8 They are very much so. And there's been a long history of
9 who develops them and how they're operated.

10 So with that, thank you.

11 MR. CARY: Okay, let me turn to a few legal points
12 here.

13 One, this is a legal matter as much as the one that
14 was raised at the very beginning of the proceeding. But
15 because this is such an important issue, so crucial, I
16 feel it's necessary for me to act like a lawyer here. And
17 so I want to preserve a couple of points for the record in
18 case this goes further.

19 One of the points we've already dealt with -- that's
20 the matter of conflict of interest, recusal -- that's been
21 dealt with.

22 The second is in my paper, grounds for dismissal,
23 request to clarify the proceeding, which begins at page 90
24 in your packet or somewhere about page 90 because I'm not
25 sure I have the right numbers. I gave grounds to dismiss

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1 this if this were treated as an appeal. Well, But we've
2 already decided it's not an appeal; it's an advisory
3 proceeding. Nevertheless, I believe there are grounds
4 that you might dismiss this case even as an advisory
5 proceeding.

6 The grounds -- I'm trying to be short here, so let me
7 say that the points are made in my written paper. I don't
8 want to rehash them. But I do want to bring up one of
9 them that I think is -- you see there lying in the
10 background are -- it's the elephant in the middle of the

11 room. And that is the real issue here. What IBEW and
12 NECA are seeking is work for their members.
13 They took this case to labor arbitration. They lost
14 the case. The decision's in the materials that I
15 submitted. They have now turned to the Board. It is
16 indeed a hard question because in a sense virtually
17 everything you do affects where work goes. But I think on
18 this particular case it's an issue that is simply there.
19 And the Board exists, the statute exists for the
20 purpose of safety. Safety. And yet you've heard nothing
21 in the presentation by IBEW and NECA that addresses the
22 safety, the purposes of the statute. They have made a
23 very technical argument based on the words of the statute,
24 but they haven't addressed the actual purpose of the
25 statute. And the reason is they're looking for work.

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1 Chapter 19.28 says the Department cannot involve
2 itself in controversies over the assignment of work. I
3 just want to preserve that point. I'm not going to go any
4 further with that. It's in my written material. But I do
5 want to preserve the point.
6 Okay, so that's the lawyer stuff.
7 Mr. Fuller, Mr. McGill were right on the mark. They
8 really hit the issues, the interpretation. We're here to
9 say that we support their decision. The decision has
10 correctly interpreted the statute, looked at the words of
11 the statute and got it right. It's consistent with the
12 longstanding interpretation of the statute by the agency.
13 It's consistent with the understanding in the industry.
14 In fact, the NEC -- the division split between the NEC --
15 and I have the old one because it's the 1981 that is the
16 one that was referred to, the NEC -- and here's the NESC.
17 These two codes represent that split. They represent
18 those two circles. This (indicating) is the one, the big
19 circle on Mr. Fuller's picture. And this (indicating) is
20 the premises wiring one.
21 Mr. Fuller's interpretation is consistent with the
22 purpose of the statute. The statute -- I spelled out the
23 history at great length in my paper. I'm not going to
24 bore you with going through that again. But it's there.
25 But you will see that the purpose of chapter 19.28 is

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1 twofold. One is safety. It's to prevent -- and this
2 particular, the NEC portion of the inspections and
3 standards, is to protect houses and buildings from burning
4 down because of faulty electrical installations and
5 wiring.
6 The other purpose of Chapter 19.28 is consumer
7 protection. It's addressed to a lay audience. It's

8 intended to protect those who hire electricians, those who
9 hire electrical contractors.
10 19.28 doesn't apply to utilities in this area that is
11 covered by Mr. Fuller's decision because utilities don't
12 need protection. They are competent. They can judge the
13 work of contractors. They can judge the skill. They can
14 judge the work of electricians. They inspect the work.
15 They accept the work. They know what they're getting.
16 They know what they're looking. They don't need
17 protection. They never have. That's the reason they were
18 exempt.
19 Finally, Mr. Fuller's interpretation makes sense.
20 That's an important issue.
21 Okay. Mr. Roblee and Mr. Sternal have said, well,
22 it's very confusing. How could there be a broad exemption
23 in the statute when there is a specific exemption in the
24 statute, that there's a specific exemption means there
25 can't be the broad exemption.

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1 Well, I think Mr. McGill really started this subject.
2 This is a complicated statute. It's, in fact, a messy
3 statute. It's not easy to understand. One of the really
4 hard parts to understand is the two circles. The statute
5 doesn't say it anywhere. It doesn't come right out and
6 say it. Why not? Because this statute was built up over
7 the course of years. Chapter 19.28 was not written as one
8 consistent piece of paper.
9 The first -- the very first statute was Chapter
10 19.29. Not 19.28, but 19.29. Then along came the 1919
11 law which is electrical contractor licensing. Then the
12 '35 law which was inspection and standards. Then the '73
13 law which was electrician certification. Each of these
14 laws came along. They have been cobbled together into one
15 chapter.
16 The '73 law was not an amendment or a new part of
17 Chapter 19.28. It was originally a chapter in Title 18.
18 It stayed in Title 18 until 1980 when it was moved over to
19 19.28.
20 The point of this is you have to look at the
21 background as you see how these statutes developed over
22 time. And that's in my written material. You'll see that
23 the two-circle view of the world is built into the
24 statutes. It's there. They don't say it, but it's built
25 into the understanding of the statute.

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1 We have addressed -- and I'm coming to the end here
2 -- because we have addressed in our presentation the way
3 the utility industry works, the impact of the decision
4 that IBEW and NECA have asked you to make. I have tried

5 to very quick sketch out the context why the two-circle
6 theory -- the two-circle view -- it's not a theory, it's
7 the way it is -- why that is there. And it's explained
8 in more detail in my written materials.

9 But it's not enough to interpret the statute to give
10 you the background and the context. The words ultimately
11 make a difference. Mr. Fuller hit the words. He got
12 them. Mr. McGill got the words.

13 There is an embarrassment of words in Chapter 19.28.
14 I could give a different statutory -- I could pick out
15 different words to get to the same result. There are
16 other ways to interpret it. You still come to the same
17 result. Obviously there are words that Mr. Sternal and
18 Mr. Roblee used. Our point is they have picked a few
19 words. They have not put them in the context of the
20 statute, the history, the purpose of the statute, the way
21 it's built up, the agency interpretation. They have taken
22 those words today and have interpreted them as though they
23 were brand new. But, in fact, we have 70, 80, 90 years of
24 the two-circle approach.

25 One of the things that is probably in the back of

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1 your mind, one of the things that you hear is -- and you
2 heard that today -- a contractor comes before you and says
3 "'So and so' is not complying with the code. I'm
4 following the law. It costs me money to do this. He's
5 underbidding me because he's not following the law.
6 Unfair competition. He's escaping regulation." There is
7 an undertone that that's what's happening in this case,
8 that the utilities are somehow escaping regulation, but
9 that's not true.

10 There are two sets of regulation. There are two sets
11 of regulation. That the utilities are not regulated under
12 this set doesn't mean they're not regulated. They're
13 regulated over here (gesturing). This is not a matter of
14 unfair competition. This is a matter of two sets of
15 regulation.

16 With that, I will conclude by saying Mr. Fuller was
17 right. We recommend that the Board decide to reject the
18 proposed policy advanced by IBEW and NECA.

19 Thank you.

20 I'll certainly be glad to answer questions.

21 CHAIRPERSON ASHFORD: Thank you.

22 Before we go to questions, Mr. Price, would you like
23 to speak now?

24 MR. STERNAL: We would like to have rebuttal, Madam
25 Chair.

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1 MR. PRICE: I think trying to separate out the

2 conduit from the wire is not the correct way to do it.
3 Personal experience. I was one of those people that
4 was working on Mount Saint Helens --
5 CHAIRPERSON ASHFORD: Mr. Price, we can't hear you.
6 MR. PRICE: My name is Gary Price, IBEW 46.
7 While I was working for D.W. Close, we had the
8 project of actually pulling the wire through the conduit
9 that had been laid by others up to Johnston Ridge. And
10 that was a typical action where we end up in the act of
11 actually pulling the wires through, we had to basically go
12 back and replace a lot of the piping that was there. And
13 that got accomplished, and a lot of the conduit that went
14 across the bridge, that was replaced as well.
15 The real challenge is is when you have it on the
16 streets in a city, you know, you do have manholes that do
17 blow in connections that go under. The statutes in the
18 state, we deal with the conduit as part of the electrical
19 code. And the exemption that we had a long time ago, it
20 was something that did work, and it was basically for the
21 benefit of the public to reduce down time if they were
22 going to have any problems with the system.
23 So I just -- I still believe that the original
24 utility exemption that was in place doesn't cause nearly
25 the hazard that everybody is talking about. It's clearly

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1 to me it's a case of reapplication to an existing process
2 that's been here, and I don't believe that we should just
3 dump it or change it without going through a regular
4 process.
5 That's it.
6 CHAIRPERSON ASHFORD: Okay. Now we've heard from all
7 the individuals that have signed up to speak.
8 You had a rebuttal?
9 MR. STERNAL: Yes. Thank you, Madam Chair.
10 First of all, I'm going to take some time to go
11 through the statute with you. And it's -- I think you
12 have this blue book (indicating)? I'll refer to the pages
13 in here.
14 The point has been made that there's this
15 longstanding interpretation -- you've heard these people
16 say there's this longstanding interpretation that supports
17 the, to me, secret two-circles theory. I don't see two
18 circles written anywhere in the code. We're going to go
19 through this book, and you will never see in here a
20 longstanding interpretation that these people want you to
21 apply.
22 Take a look at page 36. Page 40 in the book or page
23 36 in the lower right-hand corner. It's an e-mail to
24 Mr. Fuller -- from Mr. Fuller to Janet Lewis who used to
25 be the chief electrical inspector I understand, in which

1 he expresses some different observations about the
2 application of these so-called exemptions. This was in
3 February -- February 25, 2005 -- before the final
4 authoritative letter by Weeks which really doesn't say
5 much at all, but we'll get to that.

6 Take a look at this and read Ron Fuller's
7 interpretation in February. I don't think you'll see any
8 longstanding consistent application of a two-circles
9 exemption. Okay?

10 Fast forward. Let's take a look at Mr. Fuller's next
11 letter. April 18, 2005, the front of your book, page 36,
12 another letter -- or another correspondence to Janet
13 Lewis. And in this Mr. Fuller explains all kinds of
14 theories about the application of the electrical code, but
15 he doesn't have a two-circle theory, and he doesn't say
16 that Sound Transit can do what he says they can do today
17 with that November letter. In fact, in this letter he
18 observes that Sound Transit must become a licensed
19 electrical or registered general contractor to work for
20 the utility. And then the question is: Are the
21 electrical workers employed by Sound Transit or its
22 subcontractors required to be licensed? No. But Sound
23 Transit and any other subcontractors must either be a
24 licensed electrical or registered general contractor since
25 neither Sound Transit nor its subcontractors directly have

1 electrical utility status.

2 Now, how much easier would this strained pattern of
3 correspondence have been if there had been a longstanding,
4 clearly established two-circle theory? This is not
5 reality, ladies and gentlemen.

6 I want to ask you to bear with me when I go through
7 the brief that we've submitted. It starts about midway
8 through the book, and it's at page 132 marked in my lower
9 right-hand corner that I want to refer your attention
10 first.

11 You know, the -- I'm having trouble understanding why
12 the chief electrical inspector is such a water carrier for
13 the public utilities. Why is he concerned that the public
14 utilities are going to expend more money? Why is he
15 working himself out of a job of trying to regulate the
16 public utilities which is exactly the impact of his
17 two-circle theory? No inspections. No regulation. Just
18 something to think about. I don't know why he's doing
19 this.

20 And there's another atmospheric issue in this debate.
21 The utilities and the chief inspector seem to think that
22 the utilities are invested with some sort of

23 infallibility. We know this is not true. We know that
24 accidents happen.
25 And just think about what happened at Boston with the

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1 big dig. The utilities are not infallible. The
2 legislature didn't think they were infallible, and the
3 legislature did not enact a two-circles theory.
4 In my brief at page 132, I quoted exactly RCW
5 19.28.010. At the bottom of that page you can read with
6 me what it says. "All wires and equipment, and
7 installations thereof" blah, blah, blah "shall be in
8 strict conformity with this chapter" But then it
9 says, "All wires and equipment that fall within section
10 90.2(b)(5) of the National Electrical Code, 1981 edition,
11 are exempt from the requirements of this chapter."
12 So it's the wires and equipment that are exempt, not
13 the work. Very clearly.
14 And the legislature didn't say -- and there's two
15 circles here -- there's an NESC too. There's no reference
16 to the NESC in this law. And I want to caution you to
17 think that somehow this book that the utility's attorney
18 is holding up which is the NESC is somehow preemptive. It
19 doesn't preempt the State of Washington. The Attorney
20 General will have to advise you on that. The State of
21 Washington retains the right to regulate the electrical
22 industry including the utilities in this state. And it
23 has done so. There is no two-circles theory.
24 Take a look at this statute, read the language. It
25 doesn't say what they say -- they want it to say.

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1 Instead, it says what we say. Unless it's wires and
2 equipment under the NEC, it's not exempt. So the work is
3 not exempt. And that makes sense when you take a look
4 further in my brief at page 134. At the bottom I have an
5 argument highlighted about RCW 19.28.091(1). It does not
6 apply because the contractors are not employees of City
7 Light. All right?
8 You take a look at the statute. "No license under
9 the provision of this chapter" -- 19.28 -- "shall be
10 required from any utility or any person, firm,
11 partnership, corporation, or other entity employed by a
12 utility because of work in connection with the
13 installation, repair, or maintenance of lines, wires,
14 apparatus, or equipment owned by or under the control of a
15 utility" That's the distribution system.
16 If there's two circles, why do we have this specific
17 exemption in 19.28? This is a fabrication. I don't know
18 where they get it. It's interesting. It may even be
19 mystical. But it's not in the statute.

20 At the bottom of that page 135, look at RCW
21 19.28.091(5). No license -- and I quote directly from the
22 statute. "No license under the provisions of this chapter
23 shall be required from any person, firm, partnership,
24 corporation, or other entity because of work in connection
25 with the installation, repair, or maintenance of wires and

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1 equipment, and installations thereof, exempted in ...
2 19.28.010."
3 Why would there be an exception for the wires and
4 equipment in the distribution system if it was already
5 exempted under 010? Do you think the legislature writes
6 duplicitous confusing exemptions? I would warrant that
7 some of you helped write this statute. It's not what they
8 want you to think it is. This is a very clear
9 acknowledgment that there is a regulation under the law of
10 the utilities in Chapter 28. To the extent they are
11 stated in these very precise exemptions, the law applies
12 to them. You don't get out under some two-circle theory.

13 Where is the two-circle theory? Have you ever heard
14 of the two-circle theory? Has it been brought to this
15 Board before? Is it a longstanding decision by Mr. Fuller
16 or his predecessors? Where is it in writing in the
17 records of the Department? I would have expected to see a
18 consistent longstanding interpretation given back to my
19 client in this series of correspondence and e-mails if it
20 existed. Obviously it doesn't exist.

21 You simply cannot say, well, 19.28 is a consumer
22 protection act, and the NESC regulates the utilities if
23 you read the plain language of the statute. The utilities
24 want a blanket exemption. They have concocted I believe a
25 theory based on a geographic representation of a

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1 distribution system versus an end user which in reality
2 this exists, but the distribution system is regulated in
3 19.28, and it is specifically regulated in those
4 provisions I quoted to you and are cited in the brief.

5 The suggestion that this statute contains an
6 embarrassment of words I think would be offensive to the
7 legislature and to the Supreme Court. I have litigated
8 these cases in the Supreme Court. Some of you know that I
9 sued the Department of Corrections on behalf of NECA and
10 the IBEW's because the Corrections Department thought that
11 they could use prisoners to do electrical work, despite
12 what the Chapter 19.28 says. Some of these same
13 arguments, these hack-made phrases like, "Well, this is an
14 embarrassment of words," "This is a very confusing
15 statute" were used in that case. Well, let me tell you,
16 the Supreme Court had no trouble parsing the language in

17 this statute and concluding that you had to be a certified
18 electrician to do electrical work and you had to be a
19 licensed contractor to have electrical work in your
20 contracts unless there was a specific exemption in the
21 statute.
22 I am often confronted with what I'll refer to as a
23 bombastic argument. Lawyers make bombastic arguments.
24 I'm sure you've heard them. The suggestion that there's a
25 two-circle theory and that it's a longstanding

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1 interpretation which you should defer to flies in the face
2 of reality and of what the statute says. And I ask you to
3 give it as much deference as any polemic. Look at the
4 statute. Don't take my word for it. Don't credit my
5 arguments. If you can find in the statute the two-circle
6 theory, go ahead and enforce it.

7 Thanks.

8 CHAIRPERSON ASHFORD: Thank you.

9 MR. WASHBURN: Two minutes, Madam Chairman?

10 CHAIRPERSON ASHFORD: Mr. Washburn, before you begin,
11 I'll give everybody two minutes to make comments, and then
12 I really want to open this up to the Board members.
13 Because it's our ultimate decision for any decision. So
14 two minutes to everyone. Okay?

15 MR. WASHBURN: Thank you, Madam Chairman.

16 I was involved in the original intent of this
17 legislation. I've been with NECA for 35 years, have an
18 MBA, and have been involved in this legislation for quite
19 a few years. I served on this Board right here under two
20 different governors -- appointed by two different
21 governors. So I understand the intent of this
22 legislation, and they don't have it right, by the way.

23 Mr. Fuller originally stated that, "Well, if the
24 utilities don't get it right, the Department will step
25 up." That's a reactive position and not a proactive

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1 position. The problem you have here, as Mr. Cary and the
2 AG so eloquently stated, the only reason for this statute
3 is for consumer protection and public safety. Being
4 reactive is not public safety. That doesn't work too well
5 with this state and as the Supreme Court so indicated.

6 Mr. Cary erroneously stated that NECA was involved in
7 an appeal and some jurisdiction for it. We were not. He
8 said that we're only here for more work. Here's an
9 attorney billing his clients by the hour and saying we're
10 here for more work, and that's offensive to me. We're
11 here to uphold the statute. And the statute needs to be
12 upheld by this Board here.

13 The law was originally passed as the electrical

14 contractors license law in 1976 for licensing and for the
15 electrician was Chapter 18.37 in 1973. We combined those
16 laws so we'd have this Board where it is today and make it
17 more workable for the consumer and for the industry.

18 Summarizing, Madam Chairman and members of the Board,
19 that we ask advice that the Department uphold the
20 Department to look at Ron Fuller's e-mails and letters in
21 '05. It stated our position eloquently. Someway he got
22 sidetracked and went off. But the Department has always
23 interpreted this statute as we are here today asking you
24 for that advice.

25 Thank you.

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1 MR. ROBLEE: Thank you. Dick Roblee.

2 For my two minutes, this partly centers on 19.28.010,
3 which starts with the title "Electrical Wiring
4 Requirements." As Mr. Sternal pointed out, it is the
5 wires and equipment that are exempted here. We have no
6 issue with the utilities being regulated by their own code
7 or their construction standards. We're talking about who,
8 not what. There is no such exemption for the who --
9 contractors side plus the employees side -- in the part of
10 the law that they all base their case on.

11 So we go to the part of the law that does talk about
12 who deals with the wires and equipment. And not to rehash
13 old ground, but that's what the exemptions are for. We
14 have a clear line drawn for the utility side on first-year
15 contractors. We have a very clear line drawn on the
16 employee side and the employee side of the exemptions.
17 You'd better be -- if you're doing utility-type work,
18 you'd better be certified or you'd better be a especially
19 trained lineman.

20 Thank you.

21 CHAIRPERSON ASHFORD: Mr. Cary.

22 MR. CARY: I defer to Mr. Fuller if he wants to --

23 CHAIRPERSON ASHFORD: Two minutes.

24 SECRETARY FULLER: Okay.

25 I think I'll start with a statement that Mr. Cary

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1 made. I actually disagree with him on part of what he
2 said. I believe there are two circles. And I think the
3 statute and the NEC does that by their language. The
4 danger that's created by what they're asking for here is
5 not that the one circle get expanded; it's that the two
6 circles overlay each other. And then you've got utility
7 issues overlapping with ours. And that's a very unsafe
8 situation and not advisable in my opinion.

9 Mr. Sternal, he thinks I carry the utilities water.

10 But everybody that's been in this room knows that I don't

11 do that. So I kind of take that as offensively actually.
12 As relates to the comments made about the e-mails,
13 yes, I did have a different interpretation when we started
14 this process. Because I didn't get the information to
15 make a different decision from Sound Transit. It took
16 several meetings and several phone calls and contacts with
17 letters and et cetera from them before I was able to
18 determine that yes, they did have a valid contract with
19 Seattle City Light as their utilities contractor, and they
20 had the right to do that as a municipal corporation. So
21 my initial interpretation was that you're not a
22 contractor; hence, you don't have the exemption. So I
23 totally agree with them. It was confusing. But it was
24 because I didn't have the information needed to make the
25 right decision. And the right one is what's being made

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1 now.
2 The comments about this is not about installation,
3 I'm glad that at least they admit that part of it.
4 Because the "who" is just as important as that, though.
5 And the statute very clearly says it's the "what" and the
6 "who."
7 19.28.010 does say equipment. It doesn't talk about
8 the people there, the "who." But when they changed it in
9 1992 and added section 091, paragraph (5), that's when
10 they said no licenses. No license is required. They
11 closed the circle then and should have ended this debate
12 14 years ago.
13 CHAIRPERSON ASHFORD: Do you have a comment?
14 ASSISTANT ATTORNEY GENERAL MCGILL: Yes, very
15 briefly. Thank you.
16 There's some history with regard to this particular
17 interpretation, this particular case with regard to what
18 happened. And Ron touched on it briefly.
19 The first question presented to Ron was different
20 than its final interpretation. We went through a number
21 of different questions before we finally obtained all the
22 information we needed and the Department needed to make an
23 interpretation.
24 For instance, the first question presented to Ron,
25 presented to me, was whether Sound Transit is a utility.

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1 So we addressed that question. It is not a utility in and
2 of itself. Now, Sound Transit is a very interesting
3 corporation. This is a public entity in charge of
4 creating this massive transit system, largest one in the
5 state of Washington. To some people that's starting to
6 sound like a utility. But it isn't. Because we finally
7 concluded that what the NEC calls a utility is something

8 different: distribution of electricity.

9 Now, that point is made in response to Mr. Sternal's
10 first point with regard to these letters and e-mails.
11 These letters and e-mails are totally out of context with
12 regard to the final interpretation made by the Department.
13 The letter and e-mails are with regard to initial
14 discussions in this process, initial discussions relating
15 to fairly different topics with regard to, as I mentioned,
16 whether Sound Transit is a utility or not. That's not
17 what we're dealing with now.

18 The final point I'll make is with regard to this DOC
19 case. The Department is not a party to that case. The
20 Electrical Board I'm not even sure gave an opinion with
21 regard to that case. The point there is it's also not a
22 utility case. The Department of Corrections was an entity
23 who actually still is doing electrical work in terms of
24 these correctional industries. And they come to all
25 public buildings and install things. And that case, the

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1 Supreme Court made them become an electrical
2 administrator, electrical contractor.

3 And it's different than what we're faced with here.
4 This is a utility matter as an exemption in the statute
5 that is different than the issue of that case.

6 That's it. Thank you.

7 CHAIRPERSON ASHFORD: Okay. Two minutes.

8 MR. CARY: And I've been checking off-- if you've
9 noticed, I've been checking off issues as they've gone
10 along here.

11 Let me jump back into the embarrassment of words.
12 The words are kind of embarrassing in this statute.
13 There's no reference to NESC in this statute.

14 Well, there isn't in the sentence they read. But if
15 you read the next sentence in 010, there is. The sentence
16 that we've dealt with is the sentence referring to
17 19-2(b)(5).

18 The next sentence, the regulations and articles in
19 the National Electric Code, the National Electric Safety
20 Code and so forth are prima facie evidence of approved
21 methods of construction. The National Electric Safety
22 Codes was put on the same footing as the NEC.

23 Further, not in the statute but in the regulations,
24 utilities are required to comply with the NESC by WAC
25 296-45-045. This is not something we're making up.